HIGHWAY REVENUE ACT OF 1982

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 3044

SURFACE TRANSPORTATION ACT OF 1982

TITLE IV—HIGHWAY SAFETY

DECEMBER 3, 1982

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CONTENTS

	Page
Opening statement by the Chairman	1
Opening statement by Senator Cannon	1
Opening statement by Senator Danforth	28
Text of S. 3044	4

LIST OF WITNESSES

Durham, R. V., director of safety and health, International Brotherhood of Teamsters, accompanied by Bartley O'Hara, legislative counsel, and Warren Rheaume, assistant, division of safety and health	43
Henderson, Richard D., executive vice president, Private Truck Council of America, Inc., accompanied by John A. DeVierno, counsel	51
Prepared statement	53
Kiley, Ed, senior vice president, American Trucking Association, accompanied by Nelson Kooney, general counsel, and Will Johns, managing director, technical services division	34
Prepared statement	38
Kopsick, Joe, vice president, National Association of Independent Insurers, and Jim Kimble, senior counsel, American Insurance Council	54
Kuster, Donald F., president, National Industrial Transportation League and general manager, traffic and distribution, Continental Can Co., U.S.A., accompanied by James E. Bartley, executive vice president	48
Prepared statement	50
Lewis, Hon. Drew, Secretary, Department of Transportation, accompanied by John Fowler, General Counsel; Charles Swinburn, Deputy Administrator for Policy; Ray Barnhart, Administrator; and Lester Lamm, Deputy Administrator, Federal Highway Administration	23
Prepared statement	31
Perry, Mark, government affairs director, Owner-Operators Independent Drivers Association of America	46

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

American Farm Bureau Federation, statement	57
Common Carrier Conference—Irregular Route, statement	58
Supplemental statement	59
Dempsey, William H., president, Association of American Railroads, statement	67
Fruehauf Corp., statement	72
Johnston, Jim, president, OOIDA, statement	75
Kirkpatrick, Sally A., government affairs representative, Alliance of American Insurers, letter of December 6, 1982	79
National Association of Professional Insurance Agents, statement	76
Smith, Robert E., vice president, United Parcel Service, letters of December 3, 1982	78
Snyder, J. R., Railway Labor Executives Association, statement	77

HIGHWAY REVENUE ACT OF 1982

FRIDAY, DECEMBER 3, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 1:50 p.m., in room 235, Russell Senate Office Building, Hon. Bob Packwood (chairman of the committee) presiding.

Staff members assigned to this hearing: Cindy Douglass, staff counsel; and Will K. Ris, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

Mr. Secretary, it seems to me I just saw you a couple of days ago in the Finance Committee on this subject.

Secretary LEWIS. That is correct.

The CHAIRMAN. We are here today to have hearings on the Commerce Committee's part title IV of the gasoline tax bill, and of course from our standpoint that is widths and lengths. It is a subject that we have held extensive hearings on in the past. Senator Cannon has had a bill, S. 1402, which the committee reported last year and I think it is a subject we are reasonably well versed on.

I will tell the witnesses that all of their statements will be in the record in full. I think both Senator Cannon and I would appreciate it if you could abbreviate them as much as possible so that we can ask whatever questions we want.

Senator Cannon.

OPENING STATEMENT BY SENATOR CANNON

Senator CANNON. Thank you, Mr. Chairman.

Since this will be one of the last hearings that I will be participating in on this committee, I hope you will indulge me in a few general observations.

It is certainly fitting that this is a transportation hearing. By far most of the time and energies on this committee have been devoted to transportation issues as far as I am concerned. We have had a remarkable spirit of bipartisan cooperation on these matters.

As usual I am sitting here on a transportation issue fully in accord with the chairman as I have been on virtually all transportation bills that we have worked on together. That has certainly made life easier because the positions we have taken haven't always been the most popular ones or the ones that guarantee the

most political benefits. You may not have noticed that, Bob, but I certainly have.

I am proud of my record on this committee in general and on transportation issues in particular, and the bill we are discussing today is certainly one of the most important legislative efforts we have undertaken.

Title IV of S. 3044 is critically important to the transportation industry. It is essential to balancing the substantial costs that will be incurred by the trucking industry under the current tax proposals. Frankly, I am increasingly concerned that productivity increases won't be enough to offset the impact of the taxes, but we will talk more about that later.

The administration's proposal is a good place to start on improving both productivity and safety. I will be joining my other colleagues in this committee in offering a substitute that embraces the identical principles and I believe improves them even more. I am confident that we will reach a proposal that all parties will find appealing.

Finally, I want to address one issue that I sincerely feel has been misunderstood by the press and the public. This legislation would not unleash a new breed of huge trucks on the Nation's highways. There is not a single thing in this bill that would allow trucks longer than those already being driven today in over two-thirds of the states.

The most significant change would be to allow double trailers to be used in some 17 States where they are now prohibited. That change is going to occur anyway.

In overturning an Iowa law prohibiting doubles last year the Supreme Court stated quite clearly that the prohibition is an infringement on interstate commerce and has no demonstrable safety benefits. There is absolutely no doubt that under this Supreme Court ruling Federal courts will be striking down these laws one by one. All we are doing in this bill is saving the enormous legal fees that would be generated by the litigation that is inevitable.

Now that I will soon be departing for private law practice and/or consulting, however, I am willing to rethink my position.

Not really, and with respect to 48-foot trailers there are only two States which prohibit trailers of 48 feet. In every other State they are being used. Now that legislation is designed not to promote large trucks, but to promote uniform regulation of trucks throughout the country.

It is important, therefore, to include all the highways of major interstate commerce. Limiting this to the interstate highway system alone will not do the trick. I think we have found a way to include the major arteries of interstate commerce, but still exclude those roads where the new standards would cause unsafe conditions, and I feel we can do this with a minimum of regulation and bureaucracy.

Finally, let me say that this is also a pro safety bill. One need go no further than to ask the individuals that have to risk their lives day in and day out on the Nation's highways, the drivers. They will tell you that this bill will improve highway safety. We have eliminated the problem of squeezing the driver into a small cab and allowed the optimum placement of the fifth wheel.

Now, Mr. Chairman, you and I have both been exceptionally lucky in this committee to be able to work with some of the most competent Government officials in the past several years, namely, the Secretaries of Transportation in both this and the previous administration. I frankly don't understand it. If Presidents were able to choose all the other Cabinet officials of the same quality as those individuals, we would have a remarkably efficient and well-run Government. Neil Goldsmith was a hard act to follow, but I will say to you, Secretary Lewis, that you have followed that act remarkably well and I can assure you that it is a high compliment.

I am glad to see you here today and I will miss working with you. Perhaps you will see me from time to time in the private sector.

Thank you very much.

[The bill follows:]

97TH CONGRESS
2D SESSION

S. 3044

Entitled: "Surface Transportation Act of 1982."

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 1982

Mr. BAKER (for himself, Mr. DOLE, Mr. STAFFORD, Mr. GARN, Mr. PACKWOOD, Mr. DOMENICI, and Mr. HATFIELD,) introduced the following bill; which was read twice and referred to the Committee on Finance

DECEMBER 2 (legislative day, NOVEMBER 30, 1982

By unanimous consent jointly referred to the Committees on Finance to consider title I, Environment and Public Works to consider title II, Banking, Housing and Urban Affairs to consider title III, and Commerce, Science, and Transportation to consider title IV. It is further agreed that title IV will not be reported with reference to chapter 1 of title 23, United States Code, relating to the jurisdiction of the Committee on Environment and Public Works

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A BILL

Entitled "Surface Transportation Act of 1982".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE IV—HIGHWAY SAFETY

AUTHORIZATION

SEC. 401. For the purposes of carrying out the provisions of title 23, United States Code, the following sums are

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hereby authorized to be appropriated out of the Highway Trust Fund—

(1) for carrying out sections 307(a) and 403 of title 23, United States Code (relating to highway safety research and development), by the Federal Highway Administration, $13,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988;

(2) for carrying out section 402 of title 23, United States Code (relating to highway safety programs), by the National Highway Traffic Safety Administration, $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988; and

(3) for carrying out section 403 of title 23, United States Code (relating to highway safety research and development), by the National Highway Traffic Safety Administration, $31,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.

APPORTIONMENT

SEC. 402. (a) Section 401 of title 23, United States Code, is amended by deleting the second sentence thereof.

(b) The sixth sentence of section 402(c) of title 23, United States Code, is amended to read as follows: "The annual apportionment to each State shall not be less than one-half of 1 per centum of the total apportionment.".

COMMERCIAL MOTOR VEHICLE SIZE

SEC. 403. (a)(1) Section 127 of title 23, United States Code, is amended by striking the language following *"Provided"*, to the end of the first sentence and inserting the following: "and a width of 102 inches, excluding certain safety devices as designated by the States (and manufactured housing transported under authority of special permits).".

(2) Section 127 of title 23, United States Code, is amended by striking the last sentence.

(b)(1) Section 127 of title 23, United States Code, as amended by subsection (a) of this section, is further amended by adding at the end the following: "No State shall prohibit motor vehicle combinations consisting of a truck tractor and two trailing units on any segment of the Interstate System. No State shall impose a vehicle length limit of less than forty eight feet on the length of a semitrailer unit operating in a truck tractor-semitrailer combination and of less than twenty eight feet on the length of any semitrailer or trailer operating

in a truck tractor-semitrailer-trailer combination on the Interstate System. No State shall establish, maintain, or enforce any law or regulation which imposes an overall length limitation on motor vehicles operating in a truck tractor-semitrailer or truck tractor-semitrailer-trailer combination on the Interstate System. Each State shall determine and provide for reasonable access to the Interstate System by such vehicles. State length limits for combination vehicles permitted under this subsection shall apply solely to the semitrailer or trailer, and not to the truck tractor. For purposes of this section, 'truck tractor' means the noncargo carrying power unit that operates in combination with a semitrailer or with a semitrailer and full trailer.".

(2) Apportionments shall not be denied to any State conforming by October 1, 1984, to the amendments made to section 127, title 23, United States Code, by this section.

NATIONAL UNIFORM STATE REGULATION

SEC. 404. (a) There is established in the Department of Transportation a working group, composed of the Secretary or an officer of the Department appointed by the Secretary and not to exceed fifty one members to be appointed by the Secretary. The Secretary shall select the chairman of the committee from among the committee members. The appointed members shall be selected from among representatives of various State governments concerned with vehicle registra-

tion, fuel tax, and third structure tax requirements of States. The term of members shall not exceed thirty months.

(b)(1) The working group shall advise, consult with, and make recommendations to, the Secretary regarding uniform State regulations of interstate motor carriers. The working group is authorized to develop and recommend, to the Secretary, standards for uniform State regulation of interstate motor carriers in regard to vehicle registration, fuel tax, and third structure tax requirements. These standards shall include—

(A) standardized procedures and forms;

(B) base State certification;

(C) single State unit for filings, applications, and permits;

(D) payment to the base State of fees and taxes due other States;

(E) equitable distribution of revenues; and

(F) a limit on fees paid for identification stickers, plates or other indicia.

Such standards shall not define or include the amounts of any State registration fees, fuel taxes, or third structure taxes.

(2) The working group shall also:—

(A) define an approach to resolve any discrepancies in States' implementation of standards ultimately promulgated by the Secretary,

(B) identify permanent bodies to develop and recommend future modification to such standards, and

(C) consult with public and private interests contributing to, affected by, or concerned with State motor carrier requirements during the development of the standards.

(c) Members of the working group who are not officers or employees of the United States shall, while attending meetings or conferences of such working group or otherwise engaged in the business of such working group, be entitled to receive compensation at a rate fixed by the Secretary, but not exeeding $100 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2) for persons in the Government service employed intermittently. Payments under this section shall not render members of the working group employees or officials of the United States for any purpose.

(d) The recommendations required by subsection (b) of this section shall be submitted to the Secretary within thirty months of the date of enactment of this section.

(e) The Secretary may initiate rulemaking after receiving the working group's recommendations to implement those

recommendations found acceptable and in compliance with the criteria defined in section (b)(1).

(f) If the working group fails to recommend to the Secretary such standards within thirty months of the date of enactment of this section, the Secretary may develop such standards and initiate rulemaking to promulgate regulations implementing such standards.

MINIMUM FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

SEC. 405. Section 30 of the Motor Carrier Act of 1980 is amended as follows:

(a) Subsection (a)(2) is amended as follows:

"(2) The minimum level of financial responsibility established by the Secretary under paragraph (1) of this subsection for any vehicle shall not be less than $750,000 except that the Secretary, by regulation, may reduce such amount for any class of vehicles or operations if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service.".

(b) Subsection (b)(1) is amended as follows:

"(b)(1) The Secretary shall establish regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts to be determined by the Secretary covering public liability, property damage, and environmental restoration for the transportation of hazardous materials (as

defined by the Secretary), oil or hazardous substances (as defined by the Administrator of the Environmental Protection Agency), or hazardous wastes (as defined by the Administrator of the Environmental Protection Agency) by motor vehicle in interstate commerce, foreign commerce, or intrastate commerce.".

(c) Subsection (b)(2) is amended as follows:

"(2) The minimum level of financial responsibility established by the Secretary under paragraph (1) of this subsection for any vehicle transporting in interstate commerce, foreign commerce, or intrastate commerce—

"(A) hazardous substances (as defined by the Administrator of the Environmental Protection Agency) in cargo tanks, portable tanks, or hopper-type vehicles, with capacities in excess of 3,500 water gallons,

"(B) in bulk class A and B explosives, poison gas, liquefied compressed gas, or compressed gas, or

"(C) large quantity radioactive materials, shall not be less than $5,000,000 except that the Secretary, by regulation, may reduce such amount for any class of vehicles or operations if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service.".

(d) Subsection (b)(3) is amended as follows:

"(3) The minimum level of financial responsibility established by the Secretary under paragraph (1) of this subsection for any vehicle transporting in interstate, foreign, or intrastate commerce any material, oil, substance, or waste not subject to the provisions of paragraph (2) of this subsection shall not be less than $1,000,000, except that—

"(A) the Secretary, by regulation, may reduce such amount for any class of vehicles or operations if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service,

"(B) in the case of any class of vehicles transporting any such material, oil, substance, or waste in intrastate commerce other than in bulk, the Secretary, by regulation, may reduce such amount if the Secretary finds that such reduction will not adversely affect public safety, and

"(C) in the case of any class of vehicles transporting any such material, oil, substance, or waste in interstate commerce in quantities less than those requiring placarding under the Department of Transportation's hazardous materials regulations, the Secretary, by regulation, may reduce such amount if the Secretary finds that such reduction will not adversely affect public safety.".

(e) Subsection (b)(4) is amended as follows:

"(4) If, at the end of the one-year period beginning on the date of enactment of this Act, the Secretary has not established regulations to require minimum levels of financial responsibility as required by paragraph (1) of this subsection for any class of transportation of hazardous materials, oil, hazardous substances, or hazardous wastes by motor vehicle in interstate, foreign, or intrastate commerce, the levels of financial responsibility for such class of transportation shall be the $5,000,000 amount set forth in paragraph (2) of this subsection or the $1,000,000 amount set forth in paragraph (3) of this subsection, as the case may be, until such time as the Secretary, by regulation, changes such amount under this subsection.".

(f) Subsection (f) is amended as follows:

"(f) This section shall not apply to motor vehicles having a gross vehicle weight rating (GVWR) less than 10,000 pounds, provided such vehicles are not used to transport any quantity of class A or B explosives, any quantity of poison gas, or large quantity radioactive materials in interstate or foreign commerce.".

FEDERAL-AID MOTOR CARRIER SAFETY PROGRAM

SEC. 406. (a) Chapter 4 of title 23, United States Code, is amended by adding after section 408 a new section as follows:

"§ 409. Federal-aid motor carrier safety program

"(a) Under the terms and conditions of this section, subject to the availability of funds, the Secretary is authorized to make grants to States for the development or implementation of programs for the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety and compatible State rules, regulations, standards, and orders.

"(b)(1) The Secretary shall formulate procedures for any State to submit a plan whereby the State agrees to adopt, and to assume responsibility for enforcing Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety, or compatible State rules, regulations, standards, and orders. Such plan shall be approved by the Secretary if, in the Secretary's judgment, the plan is adequate to promote the objectives of this section, and the plan—

"(A) designates the State motor vehicle safety agency responsible for administering the plan throughout the State;

"(B) contains satisfactory assurances that such agency has or will have the legal authority, resources, and qualified personnel necessary for the enforcement of such rules, regulations, standards, and orders;

"(C) gives satisfactory assurances that such State will devote adequate funds to the administration of

such plan and enforcement of such rules, regulations, standards, and orders;

"(D) provides a right of entry and inspection sufficient to enforce such rules, regulations, standards, and orders;

"(E) provides that all reports required pursuant to this section be submitted to the State agency, and that such agency make available upon request to the Secretary all such reports;

"(F) provides that such State agency will adopt such uniform reporting requirements and use such uniform forms for recordkeeping, inspections, and investigations as may be established and required by the Secretary; and

"(G) requires registrants of commercial motor vehicles to make a declaration of knowledge of applicable Federal and State safety rules, regulations, standards, and orders.

"(2) If a plan submitted under paragraph (1) of this subsection is rejected, the Secretary shall provide the State a written explanation of the Secretary's action and shall permit the State to modify and resubmit its proposed plan for approval, in accordance with the procedures formulated in such paragraph.

"(c) The Secretary shall, on the basis of reports submitted by the State agency, and on the Secretary's own inspections, make a continuing evaluation of the manner in which each State with a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for comment, that a State plan previously approved is not being followed or that it has become inadequate to assure the enforcement of Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety or compatible State rules, regulations, standards, or orders, he shall notify the State of withdrawal of approval of such plan. Upon receipt of such notice such plan shall cease to be in effect. Any State aggrieved by a determination of the Secretary pursuant to this subsection may seek judicial review pursuant to chapter 7 of title 5, United States Code. The State may, however, retain jurisdiction in any case commenced before the withdrawal of the plan whenever the issues involved do not directly relate to the reasons for the withdrawal of approval of the plan.

"(d) The Secretary shall not approve any plan under this section which does not provide that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for commercial motor vehicle safety programs will be maintained at a level which does not fall below the average level of such expenditure for

its last two full fiscal years preceding the date of enactment of this section.

"(e) The Secretary shall limit a grant to any State in an amount not to exceed 70 per centum of expenditures in that fiscal year in the State in the development and implementation of programs to enforce commercial motor vehicle rules, regulations, standards, or orders adopted pursuant to this section. The funds of the State and political subdivisions thereof which are required to be expended under subsection (d) of this section shall not be considered to be part of the non-Federal share. The Secretary is authorized to allocate, among the States whose applications for grants have been approved, these amounts appropriated for grants to support such programs pursuant to such criteria as may be established.

"(f) To carry out the purposes of this section, there is authorized to be appropriated out of the Highway Trust Fund not to exceed $10,000,000 in the fiscal year ending September 30, 1984, not to exceed $20,000,000 in the fiscal year ending September 30, 1985, not to exceed $30,000,000 in the fiscal year ending September 30, 1986, not to exceed $40,000,000 in the fiscal year ending September 30, 1987, and not to exceed $50,000,000 in the fiscal year ending September 30, 1988. Appropriated funds authorized by this section shall be used to make payments to States for the Federal

share of costs expended by the States for the grants awarded. Grants made pursuant to the authority of this section shall be for periods not to exceed 1 fiscal year, ending at the end of a fiscal year.".

(b) The analysis of chapter 4 of title 23, United States Code, is amended by adding

"409. Federal-Aid Motor Carrier Safety Program.".

MOTOR CARRIER SAFETY: PENALTY AUTHORITY

SEC. 407. Chapter 119 of title 49, United States Code, is amended by adding a new section as follows:

"SEC. 11901. (a) Notwithstanding any other provisions of law, if the Secretary of Transportation finds that a violation of the rules, regulations, standards, or orders issued by the Secretary under the authority transferred to the Secretary under section 1655(e)(6) of this title has occurred, the Secretary may issue a written notice to the alleged violator. Such notice shall describe with reasonable particularity the nature of the alleged violation and the provision alleged to have been violated. The notice shall fix a reasonable time for abatement of the alleged violation, specify the appropriate civil penalty, if any, and specify the actions which the Secretary proposes to be taken in order to avoid subsequent similar violations. The notice shall indicate that the alleged violator may, within fifteen days of service, notify the Secretary of his intention to contest the matter. In the event of a contested notice, the Secretary shall afford the alleged violator an op-

portunity for a hearing on the record, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation. With respect to uncontested actions of the Secretary under this subsection, all findings of fact, conclusions of law, fines, penalties and orders shall be final, and not be subject to judicial review.

"(b)(1) Except as hereinafter provided, any person who is determined by the Secretary to have committed an act which is a violation of recordkeeping requirements issued by the Secretary pursuant to the authority transferred to the Secretary under section 1655(e)(6) of this title shall be liable to the United States for a civil penalty not to exceed $500 for each offense, with each day of a violation constituting a separate offense, except that the total of all civil penalties assessed against any violator for all offenses relating to any single recordkeeping violation shall not exceed $10,000.

"(2) Any person who is determined by the Secretary to have committed an act which is a violation of any rule, regulation, standard, or order established or revised pursuant to the authority transferred to the Secretary under section 1655(e)(6) of this title (other than a recordkeeping violation) shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense, with each day of a violation constituting a separate offense.

130

"(3) If the Secretary determines that violations or combinations of violations of certain rules, regulations, standards or orders promulgated under or issued pursuant to the Interstate Commerce Act (49 U.S.C. 304 and 11701(a)), create a substantial risk to public health and safety which have resulted in, or could reasonably lead to, serious personal injury or death, the Secretary may assess a civil penalty not to exceed $10,000 for each offense, with each day of a violation constituting a separate offense: *Provided however,* That if such a violation shall be committed by an employee, such employee shall be liable for a civil penalty not to exceed $5,000, with each day of a violation constituting a separate offense. No civil penalty shall be assessed against an employee except for violations referred to in the previous sentence or for record-keeping violations.

"(4) The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, who may, as appropriate, take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violation, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce compliance.

"(c) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement thereof in such place or places and for such duration as the Secretary may determine appropriate.

"(d) The Attorney General may obtain enforcement of any order issued or penalty imposed by the Secretary under this section by bringing an action in the district court of the United States in the district where the violation occurred or where the cited person resides or has his principal place of business.

"(e) Any person, who after a hearing, is adversely affected by a final order issued by the Secretary under this section, may within thirty days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where he has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure to neglect to do so. The commencement or proceedings under this subsection shall not, unless ordered by the court, operate to stay the order of the Secretary.

"(f) All penalties collected under this section shall be deposited into the Treasury as miscellaneous receipts.

"(g) Upon the issuance of a notice of violation as provided in subsection (a) of this section, charging that any person has violated the rules, regulations, standards, or orders issued by the Secretary under the authority transferred to the Secretary under section 1655(e)(6) of this title, and that the alleged violation creates a substantial risk to public health and safety, the Attorney General may bring an action in any District Court of the United States in the district where the violation occurred, or where cited, or where the person resides or transacts business, for appropriate temporary or permanent injunctive relief or a restraining order. The court shall have jurisdiction to grant such relief as it deems just and proper.

"(h) For purposes of this section, the term 'employee' means—

"(1) a driver of a commercial motor vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle);

"(2) a mechanic;

"(3) a freight handler; or

"(4) any individual who is employed by an employer and who in the course of his employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, a State or a political subdivision of a State who is acting within the course of such employment.".

The CHAIRMAN. If I might have just a few moments before the Secretary starts, Howard, to say some personal words to you. I have never served on a committee when I was in the minority where the Chairman treated me more fairly or decently. You never blindsided me. When I needed time you gave me time, and I will never forget that. I will frankly miss you very much. We have fought our battles by and large back to back and side to side together and, as you have said, frequently against the majority, and I mean in the sense of the majority of the total members of the committee on occasion and we have lost some. But I will never have again on this committee an ally as I had with you. You have been a credit to the Congress since you have been here and doubly so to this committee and we are in your debt.

Senator CANNON. Thank you very much.

The CHAIRMAN. Mr. Secretary.

STATEMENT OF HON. DREW LEWIS, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JOHN FOWLER, GENERAL COUNSEL, CHARLES SWINBURN, DEPUTY ADMINISTRATOR FOR POLICY; RAY BARNHART, ADMINISTRATOR; AND LESTER LAMM, DEPUTY ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION

Secretary LEWIS. Thank you very much, Mr. Chairman.

I would also like to comment to you, Senator Cannon, that I have enjoyed working with you and appreciate the contribution you have made to our well-being at the Department of Transportation. I can't think of a committee I work with in either the House or the Senate where we have had a better relationship than with your committee. The help you have given me in regulatory reform and in a number of other matters is greatly appreciated and I concur with Senator Packwood, we are going to miss you very much. So thank you for your comments.

Senator CANNON. Thank you.

Secretary LEWIS. Mr. Chairman, with your permission, as you indicated, we would like to have our testimony made a part of the record and, if that meets with your approval, I would just like to make a few comments.

First of all, with me today is Lester Lamm who is Deputy Administrator of the Federal Highway Administration; John Fowler, General Counsel; Ray Barnhart, Administrator of the Federal Highway Administration; and Charlie Swinburn, who is Deputy Administrator for Policy in the Department of Transportation.

Rather than take your time here to reiterate what has already been stated in the published statement, I would just like to make one or two comments.

The first is that we do very much support the reform that is presented in this bill. We need size and weight reform in terms of eliminating the weight barriers in three States permitting the western doubles in the East and establishing a uniform limit on trailer length increases and also on trailer width. So we are totally in suppport of the administration's position.

I would like to address what Mr. Cannon raised in his opening statement, and that is the equity of the charges that we are recommending in our proposal.

First of all, at the mandate of Congress we made a study as to the fair allocation of costs in terms of highway deterioration. It became very clear in those studies that the heavy trucks were not paying their fair share. At the present time they are paying about 26 percent. Technically they should be paying 35 or 40 percent. Our package recommended by the administration would raise their share to about 33 percent.

In a compromise somewhat recommended, I should say somewhat forced on us yesterday by the House Ways and Means Committee, we agreed to drop this to 29 percent, which would drop the costs for heavy trucks from about $2,700 to $2,000, eliminate the tax on retread tires and make a number of other reforms that we felt would be more palatable to the industry because we recognize that at the present time it is depressed. It is depressed fundamentally because of the conditions of the economy.

We further agreed that the use fee that we think they should pay would be deferred for a year so they would receive the productivity gains from the proposal that you are considering here today.

I think it is only fair to point out that the gains as we see them conservatively to this industry will be about $3.8 billion annually and the taxes imposed, about $1.7 billion. So this industry is going to receive about a two to one return.

Now I recognize the trucking industry has a very effective lobby here on the Hill in both the House and the Senate and we in no way are trying to damage their long-term well-being, nor for that matter their short-term well-being.

On the other hand, we think that if this bill does not pass and they are successful in somehow killing the legislation recommended, the greatest loser in this will ultimately and even in the short term be the trucking industry.

We think this is a constructive bill and we think it is something that has to be part of the legislation in terms of the 5-cent increase in fuel costs which will produce $5.5 billion.

The reason is this, that if you look at the 5 cents and we eliminate either size and weights and combine with the size and weights the revenues that we are insisting be part of that package, if we do that, what we are going to do is drop the cost to the trucking industry from 26 to 21 percent where we have already agreed to increase them from 26 to 29 percent.

What that does is the average driver in your community, the little guy driving his car or the person driving the pick-up truck will continue to pay for the highway deterioration of the trucking industry.

We think this is an equitable proposal and we feel very strongly that if we are going to make these concessions which we think are proper concessions in terms of the needs of the industry and in terms of increasing their productivity, they should also step up to the plate and be willing to share the cost burdens.

So Mr. Chairman, I realize you are here just to consider the size and weight proposal, but it is very much tied in, as we see it, to the fair share of the costs of this program. For that reason, I wanted to

emphasize that point and will open it up for any questions you may have.

The CHAIRMAN. Mr. Secretary, thank you.

Following our first-come-first-serve rule, Howard, you got here before I did. So Senator Cannon will ask first.

Senator CANNON. Mr. Secretary, let's talk a little about the costs and the benefits. I am concerned about the costs of this legislation. What does the bill as a whole do for a trucker in Nevada or Oregon or Arizona who doesn't operate in the East? Almost all of the productivity gains will take place east of the Mississippi. Yet the taxes will be equally applicable to all of the truckers.

Secretary LEWIS. Well, first of all, it will permit Western doubles in the East which you presently cannot bring into the East and that is going to be worth about $1.8 billion which is more than the cost of the total program. As you are aware, we are not eliminating any of the grandfather clauses which permit those in the West that are now operating over the 80,000-pound limit to continue with those.

In total the barrier States will give us about $650 million in productivity benefits. Even those States themselves, Illinois, Missouri, and Arkansas will benefit to the tune of about $260 million in terms of their economy. We think in terms of even Western carriers this is a progressive step and will be helpful.

Senator CANNON. Well, of course if the carriers were to operate into the East I would agree, but if the carriers are operating solely in the West, I am not completely convinced that the benefits are going to accrue to those carriers commensurate with the type of increase in tax levels they are paying.

Secretary LEWIS. Well, there is no question, Senator, that the people who do not have the increased limits you have in a number of your Western States will benefit to a greater degree. That is why when I said that that share of it, which is less than half of it, considerably less than half of it would be benefiting those in the West, but nonetheless it is still enough to carry the entire program.

Senator CANNON. Thank you, Mr. Chairman.

Secretary LEWIS. I might also, Senator Cannon, the width does have significant implications in the West; 102 inch helps the Oregon's and Washington's and a number of States interested in the lumber industry. So perhaps more in the Northwest than in the Southwest it does significantly help the West.

The CHAIRMAN. Senator Kasten.

Senator KASTEN. Thank you, Mr. Chairman.

Mr. Secretary, first of all I congratulate you on your persistence. It shows if you stick with something for a while you can win.

Secretary LEWIS. We haven't won yet.

Senator KASTEN. I have got a number of questions about title IV which is the part that is before us here, but, first of all, I would like to raise a very serious problem which I have with the overall highway construction bill.

I have just introduced legislation that would insure that every State receives its fair share of these highway construction funds. At present, as you are aware, the State of Wisconsin only receives 70 cents back for every dollar it contributes to the highway construction fund. Under the administration proposal, this proposal at

the present time, our share would drop from 70 cents to 68 cents for every dollar that we receive.

Wisconsin is not the only donor State under the new proposal. Many of these States are now experiencing unemployment rates well above the national average. It is interesting to look at that map because those of us that have completed our interstate systems or are close to completion and are getting lower shares here are also States with the higher levels of unemployment. I know there has been some discussion about targeting some of these moneys toward pockets of critical unemployment, but I guess those discussions have been fruitless at least at this point.

I think that States deserve a minimum guarantee of at least 85 cents back for every dollar that they put in. If this problem is not addressed in committee markup or on the Senate floor, I will urge the rest of the Wisconsin congressional delegation and Senators from other donor States like Michigan, Texas, Ohio, and Indiana to join me in voting against the 5-cent gas tax increase if we can't somehow address this problem in this particular bill.

So my question specifically, Mr. Secretary, is can we have your support for an 85-cent minimum guarantee to solve the equity problem for the donor States?

Secretary LEWIS. Actually if the bill comes out with the 85 percent, we will likely have no choice. But here is what you do when you force that on us. First of all, the 85 cents you are talking about would almost prohibit us from completing the interstate.

The thing you have to realize is that some States move more quickly with their interstates. Wisconsin did, Tennesse, Kentucky and a number of those States. Actually last year when you say 70 cents, you actually got $1.12 in Wisconsin despite what your Governor said. You got $1.12 back for every dollar you raised, but that notwithstanding.

Senator KASTEN. Do you disagree with my 68 cent figure for this particular bill as well?

Secretary LEWIS. I don't know whether that is correct or not because I don't have that figure in front of me.

Senator KASTEN. I thought that had been agreed to.

Secretary LEWIS. Here is the problem we have in terms of operating a National Highway System. If we have an objective to complete the interstates, there are going to donor and donee States. Once the interstate is completed we can totally live with your 85 cents or 85 percent. There is no problem.

But, for example, Florida has not completed its interstate. So they are getting $1.42 where you are getting 68 cents. But for many years Florida was a donor State while your interstate was being completed. At this point we don't think you can walk away from the responsibility of sharing that with the rest of the country because it is a National Interstate System.

What we feel we should do, and if you want the 85 percent, we will accept it, but what we would like you to do is to allow the 85-percent floor for everything with the exception of interstate and interstate withdrawals so that the other States that have not benefitted from early interstate completion as you did originally in Wisconsin can now complete theirs. We are not trying to support an

inequity here, but we do have a responsibility for our National System.

We have one further problem. Your State and States like Montana, Idaho, Wyoming, and I think even Nebraska, but I may be wrong, but at least those three States are in a position where, for example, in Montana, if they kept 100 cents of every dollar they raised in gas tax all they could do is put the signs on their Interstate System. Thus, the commerce of this country cannot move unless there are donor and donee States, and Wisconsin, California, Texas, the industrial States that are producing goods are going to end up paying to get through the Nebraska's and the other States that do not have the population and cannot raise the revenue.

We can live with a guarantee of 85 cents if you are willing to permit us to complete the interstate and also those States that want to take interstate money out and do whatever they want to do with it which is the same thing you did in Wisconsin. They will buy your concept. We are not trying to create inequities here. What we are trying to do is keep a National Highway System together.

Senator KASTEN. So what you are saying is that the administration would accept the bill with the 85 cents.

Secretary LEWIS. If you are willing to eliminate the interstates and interstate withdrawals from the proposal. In other words, what I am saying to you, and I am not trying to mislead you in any way, is you would be guaranteed 85 cents on everything except the completion of the interstates so that we can support a National Interstate System.

Senator KASTEN. I understand what you would like and I also understand the principles, but, as you are aware, the other kind of solution to this problem, which I think is much worse from your point of view, would be the idea that a State could simply keep its nickel back in the State, and that is something that is being discussed by the Northeast/Midwest Coalition and that would essentially destroy the whole idea of what you are trying to do.

So between those two concepts I think you might have to give in a little bit even more than you are willing to right now on the 85-cent minimum, especially if we want to get this bill done in the time it seems to me that we want to move it in.

Secretary LEWIS. Again the only comment I can make is that Wisconsin has received considerable aid throughout the years and is very close to completing its Interstate System. Now the Governor wants to back out and not complete Florida's and other such States.

Senator KASTEN. My numbers are different than yours. We end up with a historic rate of about 75 cents over the last 20 years or so.

Thank you, Mr. Chairman.

Secretary LEWIS. The point I am making, Senator, is that we just want to complete the interstates, we have basically no argument with what you are talking about as some floor.

Senator KASTEN. But they are not going to be completed unless there is some better sense of equity than the equity that we have now. At least the bill isn't going to be passed as quickly as you and I would like for it to be passed, I would suggest, unless we get some

kind of an arrangement here and we can work with you on it. I want to work with you on it because I think that this bill is sound legislation and it deserves to be passed.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Danforth.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Thank you, Mr. Chairman.

We have before us today title IV of S. 3044, the Surface Transportation Act of 1982. While this represents a small portion of the overall bill, title IV contains significant provisions dealing with truck size, truck insurance, and motor carrier safety.

These are important to the people of the State of Missouri. Missourians are opposed to bigger trucks operating on their highways. They are particularly concerned about the expensive road and bridge repair work required by heavier trucks, and the increased safety problems caused by the mix of smaller cars and bigger trucks.

Mr. Chairman, as a member of the Finance Committee, I am working on the issue of a fair user fee to be paid by truck drivers to fund road and bridge repair. As a member of the Commerce Committee, and particularly as chairman of the Surface Transportation Subcommittee, I am going to take a good hard look at the safety issues surrounding bigger trucks.

At the outset, I want to commend the administration, particularly Secretary Lewis, for being sensitive to the motor carrier safety by including safety provisions along with the proposal to increase truck size. Motor carrier safety is indeed a serious problem. In 1982, 32,306 truck accidents were reported to the Bureau of Motor Carrier Safety of the Department of Transportation. These accidents resulted in over 2,800 fatalities, more than 28,500 injuries and $355 million in property damage. Fewer bus accidents were reported, but it is nevertheless a significant concern.

S. 3044 takes important steps toward improving highway safety. The grant program established under section 406 should increase enforcement of commercial motor vehicle safety regulations by strengthening State enforcement programs. Increased enforcement will assure that there is a far greater chance of detection of safety violations.

Section 407 expands DOT civil penalty authority to prosecute a variety of violations of commercial motor vehicle safety regulations. With increased penalties that are easier to enforce it will no longer be cost effective to keep a truck on the road if it is unsafe.

These are good provisions, but I believe more needs to be done. A comprehensive approach to highway safety is clearly needed. DOT must be given clear authority to regulate all commercial motor vehicles over 10,000 pounds to insure that trucks are safely maintained and operated. I also believe trucking employees must be protected from discipline, discharge, or discrimination for refusing to drive an unsafe vehicle or for reporting safety violations.

Mr. Chairman, I also want to take this opportunity to thank you and your staff for your concern in this area and your help in incor-

porating comprehensive motor carrier safety provisions into title IV of this bill.

It is my understanding that the title of the bill that is before the Commerce Committee is going to be marked up on Monday morning and I regret to say that I am going to have to be in my State on Monday morning.

The CHAIRMAN. The reason, Jack, we are doing that, assuming that Howard Baker is correct that we are going to finish by the 17th, and there are four committees involved in this bill, if we don't mark it up on Monday and get it going and the other committees get it going, we are not going to get this out for the administration before the end of the year.

Senator DANFORTH. Well, you are the Chairman and that is fine, except I just want to figure out what I can do, if anything by way of leaving a proxy on Monday and, also, I obviously would retain my right to offer any amendments on the floor.

Mr. Secretary, it is clear that State governments have traditionally had a role to play in highway safety, and it is also clear that State governments have had a role to play with respect to building highways and maintaining highways. The question of length and width, which is before this committee, and the question of weights, which is before another committee, do go to the issues of safety and the issues of maintenance of highways.

I understand your position that you want a national system, but I wonder if you can see any constructive line for us to pursue in the Congress to try to retain some function for State governments with respect to length and width and weight?

Secretary LEWIS. Well, we think the States should have total responsibility in terms of width and length with the exception of the interstate system. All we are proposing here is uniformity for the system that is being paid for by the entire country, which is the interstate system.

In your particular State, and I know what you are referring to here, we have a problem nationally because of the so-called barrier States, Illinois, Missouri, and Arkansas. We feel that on the interstates and for access on and off of the interstate that people can change loads to comply with your local laws but that there is a national priority which should prevail on the interstate.

In your particular State if this gross weight barrier is eliminated, it will provide about $260 million in productivity gains just to the three States involved and it will not affect any of the highways with the exception of the interstate.

The problem we have, and I don't mean to be facetious with it, but your State is supposedly the gateway to the West, but the problem is the gate is closed.

So what happens is that we move goods and services from the Pacific Ocean to Missouri, change our conditions and then go from there to the Atlantic Ocean. We feel that this is an undue burden that you are placing on the rest of the country. Although I certainly respect the views of your State and U.S. Senator there, but we feel that since this is an interstate system and supposedly under the jurisdiction of the Federal Government that we should have uniform standards.

Senator DANFORTH. Thank you very much.

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The CHAIRMAN. I wish you wouldn't equivocate, Mr. Secretary.
Senator Pressler.
Senator PRESSLER. No questions.
The CHAIRMAN. Mr. Secretary, I have no questions.
Senator KASTEN. Mr. Chairman.
The CHAIRMAN. Oh, excuse me, Bob, yes.
Senator KASTEN. Could I ask just one remaining question.
The CHAIRMAN. Sure.

Senator KASTEN. Mr. Secretary, it is my understanding that Canada already has the 102 inch width uniform. By the provisions of this bill we end up now with a uniform or are slowly working toward a uniform 102 inch width. Have you studied or has your Department studied the implications of these provisions on the reciprocity issue that came up during the bus deregulation bill earlier this year? In other words, is this going to make it even more likely that we are going to see more and more Canadian, or is that just going to exacerbate that problem which we already see as a significant one for our domestic trucking industry?

Secretary LEWIS. I can't answer your question. Charlie Swinburn says he can.

Mr. SWINBURN. Senator, as you probably know, since passage of the bus bill we have been engaged in fairly intensive dialog with the Canadian Government on this question of reciprocity at the direction of the President and in cooperation with the USTR.

Last week the President lifted the embargo against Canadian entry into this country because of an agreement that was signed by Ambassador Brock and the Canadian Government in which both governments pledged to attempt to gain freer access for both countries; with trucking firms within the other country to consult regularly and most importantly from our point of view to monitor very closely the flow of goods across the border.

We are directed by the Congress in the bus deregulation bill to provide you with a report every 6 months on that flow of goods across the border and I can assure you we will be watching for trends that might indicate an imbalance in that flow, and if those trends develop that is an imbalance that would be negative for us. If those trends develop we will be recommending appropriate action to the President and to the Congress.

Senator KASTEN. Would you agree with the kind of general thrust of my question, that being that the length differential, the 96/102 at least tended to be a barrier and now that that will be eliminated that we could see an even more extensive problem than we already have with Canadian trucking?

Mr. SWINBURN. I think that will probably be true for a limited amount of time until our people have the 102's onboard, but at the same time it meant that we in taking our less than 102 equipment across the border into Canada where there was competition head to head were operating at a competitive disadvantage with the 102 inch trucks. So we would pick up a benefit in that regard.

Senator KASTEN. I just hope we will be able to take our trucks into Canada. That hasn't been working out so well so far and it has been mostly a one-way street as you are aware and that is why we attached those provisions onto the bus deregulation bill. I think it

is a very significant problem and I hope we can continue to work together on it.

Secretary LEWIS. Senator, furthermore on that, as you probably know, it has been added to our appropriations bill by Senator Andrews. But if this is a significant problem, we would have no objection to an amendment that gave time for our carriers to be competitive with the Canadians. I don't know whether we are talking about 6 months.

The problem is the trailer sales have not taken place in that width and mainly because nobody knew whether they could use them or not. If there were some way to equitably resolve that issue we would have no objection.

Senator KASTEN. Thank you, Mr. Chairman.

The CHAIRMAN. Any other questions?

[No response.]

The CHAIRMAN. Thank you, Mr. Secretary.

Secretary LEWIS. Thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON. DREW LEWIS, SECRETARY OF TRANSPORTATION

Mr. Chairman and and members of the Committee: I am pleased to testify today on the truck size and weight provisions contained in the administration's proposed highway, transit and user fee legislation. We believe that these provisions, if enacted, will bring about substantial economic benefits to the Nation's trucking industry by increasing productivity. These benefits should result in lower costs for truck transportation, which will help to combat inflation and stimulate economic recovery.

TRUCK SIZE AND WEIGHT

The truck size and weight reforms we are advocating, however, must be considered in the context of the full highway bill. I have indicated upon numerous occasions over the past 2 years that size and weight relief is intimately tied to the question of user charge reform and the size of the highway program itself. It is for this reason that we have included these three features in the bill, in what I consider to be a balanced and compatible structure. To remove or significantly alter one element will, in my opinion, result in an unbalanced and unacceptable overall bill.

You are undoubtedly aware of the serious deterioration of our Nation's highways and bridges. We must redress this situation immediately and that can only be accomplished through a major increase in the amount of funds being invested in the construction and reconstruction of the highway network.

Our bill provides for increased funding to help rebuild our Nation's infrastructure, including our highways and bridges. At the same time our studies show that the costs of our highway system are not being equitably shared by the various users of the system. In particular, the report I sent to the Congress earlier this year indicates that the largest and heaviest trucks are significantly underpaying and are being cross-subsidized by the small single unit trucks. Our bill proposes changes in the way we assign cost responsibility among vehicle classes in order to eliminate these inequities.

These changes shift the burden from lighter trucks to heavier trucks. Even without the proposed increases in user fees, assuring a fair allocation of costs will require an increase in user charges paid by the heavy truck segment of the industry. But we are convinced that our recommended size and weight changes will yield overall productivity benefits that greatly exceed the user charge increases in the bill. Mr. Chairman, it is because of these balances and redistributions of costs and cost savings that we believe strongly that the size and weight reforms be considered as inseparable from the user charge measures.

Turning to the specifics of the administration's size and weight proposal, there are four major provisions that deal with allowable size and weight limits on the Interstate Highway System:

(1) Nationwide uniformity of axle load limits and gross vehicle weight limits would be achieved by eliminating the lower limits still remaining in the three "barrier" States—Arkansas, Missouri, and Illinois.

(2) No State would be allowed to establish length limits of less than 48 feet for single trailers operating in tractor semitrailer units or 28 feet for double-bottom tractor semitrailer, trailer units.

(3) All States would be required to allow the operation of "doubles" on the entire Interstate Highway System with provision for reasonable access to and from the System; and

(4) Allowable truck widths would be increased from 96 to a mandatory 102 inches.

Mr. Chairman, last year I forwarded to the Congress a report on our analysis of the costs and benefits of a series of possible changes to the existing Federal truck size and weight restrictions. While that report did not recommend a specific set of changes in Federal size and weight limits, its underlying analysis and its results do give us the basis for a very good estimate of the costs and benefits we can expect from our proposed changes. The operation of "doubles" nationwide along with the elimination of the three barrier States yield savings in trucking costs of some $3 billion per year. We estimate that these savings would be increased by another billion dollars if the trailer length provisions in our proposal are implemented. These are, of course, estimates for the entire Nation and should not be interpreted to mean that each and every truck operator or owner will share equally in these cost savings. The trucking industry is simply too diverse in its operations, markets, and equipment for this to happen. But we are confident that on the whole this estimate of benefits is sound and that the Nation's economy, itself, will be the beneficiary of impressive savings in motor carrier transportation costs.

The Department's report also provided estimates of the increases in costs that would result from these size and weight provisions, mainly in the way of increased pavement and bridge costs. Although our analysis shows that transportation savings will greatly exceed those pavement and bridge costs, I would at the same time like to emphasize that without restoration of the system, these savings will not be realized.

Finally, Mr. Chairman, I should note that our studies show that the size and weight provisions we are advocating will not in any significant way adversely affect the existing competitive balance existing between the intercity trucking and railroad industries. Diversion of traffic from railroads to motor carriers will be less than 2 percent, a level we believe so minimal as not to cause any financial hardship to the railroad industry. This legislation moves in the direction of economic efficiency where motor carriers pay their fair share and can use the roads in an efficient manner.

NATIONAL UNIFORM STATE REGULATION

Section 404 of our bill relates to section 19 of the Motor Carrier Act of 1980, Public Law 96-296 which required the Department of Transportation and the Interstate Commerce Commission to develop legislative or other recommendations to provide a more efficient and equitable system of State motor carrier regulations. After soliciting public comments, both written and oral, a final report detailing inconsistencies between State regulations in these areas has been prepared.

The report clearly describes the considerable burden faced by interstate motor carriers in certifying their vehicles for legal travel on the highways of the various State. It recognizes that the regulations of any one State alone may not burden interstate commerce, but that the cumulative effect of all the different State regulations, involving up to four different government units within each State, constitute the major problem.

The administration's proposed legislation would deal with this issue by establishing a working group of State officials that would prepare a uniform set of standards for the consideration of the Secretary. The Department would have discretionary authority to initiate rulemaking after receiving the working group's recommendations. Perhaps through this forum we can begin to address the problems that the States and interstate carriers face in this regard.

MINIMUM FINANCIAL RESPONSIBILITY LEVELS FOR TRUCKERS

Another provision of title IV addresses the minimum insurance levels for motor carriers. Section 30 of the Motor Carrier Act of 1980 established significantly higher levels of financial responsibility for truckers than had ever before been required under either Federal or State law. Beginning July 1, 1981, for-hire carriers of nonhazardous freight had to have at least $750,000 of financial responsibility; all carri-

ers of certain very hazardous commodities had to have $5 million and carriers of other hazardous commodities had to have $1 million. The Department was given authority until July of next year to reduce those levels—to not less than $500,000, $1 million, and $500,000, respectively—if doing so would not adversely affect public safety and was necessary to prevent a serious disruption in transportation service.

Our evaluation of the trucking industry and of the insurance industry which services it strongly indicated to us that the only way to satisfy both of these congressional standards was to impose the reduced limits permitted by the statute. Insurance industry loss experience data and our own accident cost data both show that the reduced levels are more than adequate to protect the public. Also, given the current depressed state of the trucking industry, we believe that the increased insurance premiums required to meet the higher levels which take effect this July will force many small truckers out of business, seriously disrupting needed transportation service. Further, State insurance reserve and licensing requirements will make it difficult, if not impossible, for many small insurance companies to underwrite these higher limits. Since small truckers tend to deal with small insurors, the results will be even more disruption of transportation service. This is particularly significant when we recall that one of the principal purposes of the Motor Carrier Act was to increase opportunities for small truckers. Unless the obstacles posed by these financial responsibility requirements are removed, the act's promise to small and minority truckers will go unkept. The administration's proposed amendment removing the requirement that higher limits become effective this July is necessary to assist the trucking industry and our economy.

MOTOR CARRIER SAFETY PROGRAM

Section 406 of our bill stems from the positive results or our 3-year demonstration program in increased state involvement in truck safety inspections. The study analyzed the results of four States' expanded commercial vehicle inspection activity under uniformly trained inspectors and standardized inspection procedures and criteria. Given the unique safety risks inherent in heavy commercial vehicle operations, in terms of their cargo (often hazardous materials), their weight and handling characteristics, their high annual mileage, and driver work hours, a separate safety strategy is necessary to protect other highway users and the public in general from any untoward risks. This section provides for Federal assistance to State efforts to enforce motor carrier safety laws, with authorizations beginning at $10M in fiscal year 1984, with annual increases of $10M for each of the fiscal years 1985 through 1988. The authorization contained in this section will allow the States to monitor the safety practices of drivers and the safety conditions of both vehicles and cargo.

MOTOR CARRIER PENALTY AUTHORITY

The existing Federal Motor Carrier Safety Program suffers from several deficiencies in basic statutory authority, which is creating serious difficulties in its proper administration. The first deficiency concerns the coverage of available enforcement sanctions and the inadequate levels of sanctions that are available. The current criminal and civil penalty provisions were established in the 1935 amendment to the Interstate Commerce Act. The civil penalties apply only to for-hire carriers and then only to recordkeeping and reporting violations. Substantive violations must be pursued in criminal courts with their crowded dockets, and many U.S. attorneys are reluctant to proceed with these cases, thus frustrating compliance efforts. Even where cases are prosecuted, the fines are minimum—$100 to $200 levels, resulting in questionable deterrent value. Our proposal revises the civil penalty amounts to provide up-to-date sanctions and enhances the enforcement authority of the Federal Highway Administration.

Second, a Federal Court of Appeals has recently held that an unintended error was made in the partial recodification of the Interstate Commerce Act, resulting in the removal of criminal sanctions applicable to private carriers. As a result, FHWA has no criminal penalty authority in this area. The administration's proposal will alleviate some of the problems created by this deletion by creating enhanced civil penalty authority, in effect, decriminalizing this area of the law.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you or other members of the committee may have.

ATTACHMENT

ESTIMATED ANNUAL TRUCK TRANSPORT COST SAVINGS DUE TO TRUCK SIZE AND WEIGHT CHANGES—MODE SHIFT EFFECTS EXCLUDED

[In millions of dollars]

Savings in transport costs	1980 dollars	1985 dollars
1. Eliminate gross weight barrier	[1] 650	[1] 830
2. Permit western doubles in east	1,800	2,300
3. Trailer length increases	990	1,270
4. Trailer width increases	420	540
Totals	3,860	4,940

[1] 40 percent of this realized by barrier States.

The CHAIRMAN. Next we will take Mr. Ed Kiley from the American Trucking Association.

STATEMENT OF ED KILEY, SENIOR VICE PRESIDENT, AMERICAN TRUCKING ASSOCIATION, ACCOMPANIED BY NELSON KOONEY, GENERAL COUNSEL, AND WILL JOHNS, MANAGING DIRECTOR, TECHNICAL SERVICES DIVISION

Mr. KILEY. Thank you very much, Mr. Chairman.

My name is Edward V. Kiley. I am senior vice president of the American Trucking Association. With me today, Mr. Chairman, is Mr. Nelson Kooney, our general counsel, and Mr. Will Johns who is managing director of our Technical Services Division.

We have a complete statement we would like to submit for the record and with the Chairman's permission I would like to summarize that statement.

We support the provisions of Section 403 of S. 3044 as they pertain to vehicle length and width. These provisions insure national operation of the twin-trailer combination which means increased productivity in the trucking industry and significant savings in fuel.

When we originally supported these provisions concerning both length and width, we recommended that the new standards apply to the National System of Interstate Highways and to federally aided primary highways. The reason for this was that both the interstate highway system and the primary system are basically built to the same standards.

We still believe the length and width standards should apply to the primary Federal aid system as well as to the interstate system and recommend that the legislation be amended to show this. We also support the provisions that make the mandatory width of 102 inches. 102 inches is certainly justified in terms of an increased productivity.

I think it is very important to keep in mind, Mr. Chairman, that the present limit of 96 inches in the Federal law, if you track that historically goes back to a time when we had lanes of 10 feet. At that time it was recommended that when we build 11-foot lanes that we should go to 102 inches. Now we have 12-foot lanes. So certainly the 102 inches is now justified.

Section 403 states that the operation of these more modern vehicles on designated highways off the interstate system will be at the discretion of the States. We feel this is too limiting. We recommend that from the standpoint of access to the roads in which these vehicles may operate that the provision in the law be changed to be amended to read as follows:

That no State may enact or enforce any law denying reasonable access to commercial motor vehicles subject to this act to and from the interstate highway system and the Federal-Aid Primary System and points of loading and unloading, including terminals and facilities for food, fuel, repairs and rest.

A further change we would seek in the length provisions is a special provision to allow the automobile transporters to take advantage of the new standards. Section 403 defines a truck tractor as a noncargo-carrying power unit. This is correct as a general description of a truck tractor, but it is not correct in reference to such vehicles when transporting automobiles.

Accordingly, we propose an additional sentence be added to this paragraph to read: "A truck tractor and semitrailer engaged in transporting automobiles may transport motor vehicles as a part of the power unit."

The provisions for improved vehicle dimensions as set forth in S. 3044 would give the States until October 1984 to comply with the new standards before they would suffer any penalty for noncompliance. We see no reason for this delay. Furthermore, any special truck taxes included in other titles would become effective early in 1983.

This means that the industry would be paying increased taxes to be recovered through increased productivity yet to come about. In other words, we would be paying in advance for something yet to be achieved. However, the latter conceivably could not come about on a nationwide basis for 1½ years after the taxes are enacted. As I said, the industry would be paying heavily in advance.

So therefore we recommend that the new size standards become effective immediately upon passage of the legislation or within a 6-month time period, or at the latest no later than the next State legislative session.

As to the DOT's proposal for changes in the present insurance requirements for motor carriers, we are opposed to the elimination of the financial responsibility limits recently enacted by the Congress in the Motor Carrier Act of 1980 for all the reasons set forth in our full statement.

A proper phase-in period was allowed in the 1980 act for carriers of all sizes to adjust and it is now time to set the upper limits for adequate protection of the public and as an incentive to reduce accidents.

We do support the provisions of the bill which would extend the insurance requirements to those segments of the industry which are not presently covered; that is, transporters in foreign commerce would become subject to the insurance requirements applicable to hazardous materials transportation and the extrahazardous materials insurance limits would apply to the smaller vehicles.

Small quantity transportation of hazardous materials in both interstate and intrastate commerce should be subject to the insurance levels required for nonhazardous materials.

Finally, we heartily support Federal aid to the States and allowing them to enforce Federal motor carrier safety regulations in both intrastate and interstate truck operations. This is meaningful safety enforcement.

We oppose, however, greater penalty authority for the Department of Transportation to enforce the same regulation. DOT has all the authority it needs to enforce its regulations. The proposed new authority in our view would encourage harassment by Federal officials and deter them from utilizing their more effective tools which we have listed in our full statement.

Now, Mr. Chairman, the other provisions of title IV which concern us are, one, to achieve national uniform State taxing and licensing regulation of motor carriers; revisions in the present insurance requirements for motor carriers; a program for State enforcement of Federal motor carrier safety regulations; and increased enforcement powers for the Secretary of Transportation for violations of Federal motor carrier safety regulations.

I would briefly like to cover our positions on each of these. Our complete statement covers each of these in greater detail.

We support the concept of State officials and industry representatives working with Federal officials to seek some uniformity and reasonableness to the everincreasing array of State regulation in regard to motor vehicle registration, fuel taxes and other taxes.

The problem we have with the actual language of the bill is that DOT unilaterally drafted it without publishing its report in this area which is mandated by the Motor Carrier Act of 1980. There are both technical and substantive flaws in the proposal and we point them out in our full statement. We are recommending that this section be deleted and reconsidered in the next session of Congress under a more thorough review by the affected parties.

Since the DOT proposal calls for a 30-month additional study, we believe no delay will be made in the final implementation of uniform regulations. More analysis before the law is passed can result in a more definitive program for earlier implementation.

That summarizes our statement, Mr. Chairman, and I would be pleased to answer any questions you may have.

The CHAIRMAN. Thank you very much.

Senator Cannon.

Senator CANNON. Thank you, Mr. Chairman.

Mr. Kiley, you heard my question to Secretary Lewis. I would like to pose that same question to you. What benefits are likely to accrue to a trucker out in the West, for example, say, Nevada where the main benefit they are getting is the opportunity to pay more taxes?

Mr. KILEY. They would get none. As for the carriers in the West, most of them are regional carriers. They don't operate into the East and many of them do not want to operate into the East, and they would get absolutely none of the full productive benefit from the size and weight proposals being considered with these new taxes. For example, they now are at the limits that would be contained in the proposed size and weight relief. So there is no productivity for the western carriers in these proposals. They would be paying the higher taxes but get no compensatory return in added productivity.

Senator CANNON. Two years ago ATA supported S. 1402, the Truck Safety Act. Do you still support the elements of that act.

Mr. KILEY. Yes, sir, I might add that the 102 inches of width would be useful in the West. They don't have that today. But we must keep in mind two factors as far as the 102 inches of width. We support it very heartily, we endorse it and we want it passed. There are two problems here, however, in considering productivity and what it means to the carriers.

First of all, the productivity gains are down the road when the carrier can buy the equipment. He doesn't have it today and it will be quite a while before he can get it, and with the depressed state of this industry today if you add on top of that the taxes they are talking about, he will probably never be able to buy that kind of equipment. Even there not all carriers can use that width, but it is very important to many parts of the industry. But here again, even that productivity is a long way down the road and we would be paying taxes today for something we may never get for the reasons I have cited even though it is needed and we should have it.

Senator CANNON. What about the flat car length argument that the railroads make that this is going to obsolete a lot of their flat cars if you go to the added length?

Mr. KILEY. It shouldn't obsolete their flat cars if they want to make the investment in the flat cars to handle modern truck trailers. I don't think this industry should ever confine its technological improvements to the capability of the railroad industry. If we can operate with the type of trailers and truck sizes and weights which the highways were designed for, and that is what the provisions that you are considering would be, we shouldn't be restricted because the railroads can't carry them on their piggyback flats. Let them modernize their equipment, too.

Senator CANNON. So you are saying that if I get back to my constituents between now and January 3, the best I could tell them is they are going to have the opportunity under this bill to pay an added tax?

Mr. KILEY. And get nothing back, until the day may come when they can buy the 102 inches. But, as I said, it is bad enough now with the added taxes that I doubt they will ever be able to buy the equipment.

Senator CANNON. Thank you, Mr. Chairman.

The CHAIRMAN. Larry. Senator Pressler.

Senator PRESSLER. What economic impact do you think this will have on the regulated? I know the independent truckers really have expressed the strongest view that what we are doing here, and not only here but in the whole bill is going to do a great deal of damage in terms of economic survival.

Mr. KILEY. To the regulated industry?

Senator PRESSLER. Yes.

Mr. KILEY. Enormous damage, Senator. For example, if you look at the tax increases they are talking about, I mean the Department of Transportation, even the reduced amount that the Secretary said they have come down to, you convert that into operating costs per mile and you are going to come up with an increase of 2 percent in the total operating costs of a motor carrer. Now that is 2 percent of their income.

We have the vast majority of our carriers today operating at a 99 operating ratio. That means they have got 1 cent left after all expenses. This means that at a 2-percent increase they will be in the red. They will be losing money. They will be losing money, with these added taxes, and the productivity is nowhere near.

Senator CANNON. Thank you.

The CHAIRMAN. Mr. Kiley, I have no questions. Thank you very much. We appreciate it.

Mr. KILEY. Thank you very much.

[The statement follows:]

STATEMENT OF EDWARD V. KILEY, SENIOR VICE PRESIDENT, AMERICAN TRUCKING ASSOCIATIONS, INC.

My name is Edward V. Kiley. I am senior vice president of the American Trucking Associations, Inc., with offices at 1616 P Street, NW., Washington, D.C.

The organization is a federation with affiliated associations in every State and the District of Columbia, plus 13 national conferences. In the aggregate, we represent every type and class of motor carrier operation in the country, both for-hire and private.

We appreciate this opportunity to present our industry's position on matters of concern to us contained in title IV, Highway Safety Authorization, of S. 3044, the Surface Transportation Act of 1982.

This hearing has been preceded by hearings before other committees in both the Senate and House on the overall provisions of the Surface Transportation Act of 1982. Our testimony before those committees was primarily directed to increased taxes and highway funding.

The five sections in title IV to which we direct these comments are:

Section 403—Commercial Motor Vehicle Size;
Section 404—National Uniform State Regulation;
Section 405—Minimum Financial Responsibility for Motor Carriers;
Section 406—Federal-Aid Motor Carrier Safety Program; and
Section 407—Motor Carrier Safety: Penalty Authority.

SECTION 403 COMMERCIAL MOTOR VEHICLE SIZE

We support the provisions of section 403 of S. 3044 as they pertain to vehicle length. These provisions insure nationwide operation of the twin-trailer combination which means increased productivity in the trucking industry and significant savings in fuel. We also support those provisions that make mandatory a width of 102 inches. The length provisions in section 403 are identical with those contained in S. 1402, which was considered by this committee earlier this year. One significant change from S. 1402, however, is that the provisions on width raise the permissive 96 inches as contained in the present Federal law, to a mandatory 102 inches. Unless all states are required to permit this width, it is of little value. A mandatory 102-inch width is the only practical approach as it will lead to a quicker realization of the increased productivity that can come from this added dimension.

When we originally supported the provisions concerning width and length, we recommended that the new standards apply to the National System of Interstate Highways and to Federal-Aid Primary Highways. The reason for this was that the Interstate System is only part of the total Primary System and, since the design of this System is equivalent to the Interstate System, there was no practical reason for not allowing uniform vehicle operations on both. It was this fact which convinced the Federal Highway Administration to attest in hearings before the Congress in 1974 that the new Federal size and weight limits should apply to the Primary System as well as the Interstate System. We still believe the length and width standards should apply to the Primary Federal-Aid System as well as to the Interstate System and recommend that the legislation be amended to reflect this.

Section 403 states that the operations of these more modern vehicles on designated highways off the Interstate System will be at the discretion of the States. This is too limiting, and could easily result in frustrating the intent of the Congress to achieve nationwide operation on our highway system of the most modern type of truck or truck combination.

We recommend that, from the standpoint of access to the roads on which these vehicles may opeate, this provision be amended to read: "No state may enact or en-

force any law denying reasonable access to commercial motor vehicles subject to this Act to and from the Interstate Highway System and the Federal-Aid Primary System and points of loading and unloading, including terminals and facilities for food, fuel, repairs, and rest."

A further change we would seek in the length provisions is a special provision to allow the automobile transporters to take advantage of the new standards. Section 403 defines a truck-tractor as a "non-cargo carrying power unit." This is correct as a general description of a truck-tractor but is not correct in reference to such vehicles when transporting automobiles. Accordingly, we propose an additional sentence be added to this paragraph after the sentence ending "semitrailer and full trailer." The additional sentence should read: "A truck-tractor and semitrailer engaged in transporting automobiles may transport motor vehicles as a part of the power unit."

The provisions for improved vehicle dimensions as set forth in S. 3044 would give the States until October 1984 to comply with the new standards before suffer any penalty for noncompliance. We see no reason for this delay. As far as the length provisions are concerned, there is equipment in operation today that can take advantage of the new standard. Furthermore, any special truck taxes included in other titles of S. 3044 would become effective early in 1983. This means that the industry would be paying increased taxes to be recovered through increased productivity gains to come about by new sizes and weight standards. However, since the latter conceivably could not come about on a nationwide basis for a year and a half after the taxes are enacted, the motor carrier industry would be paying heavily in advance for something it does not have. We recommend that the new size standards become effective immediately upon passage of the legislation or within a 6-month time period, but certainly no later than the next state legislative session.

With these clarifying changes, we believe that the language contained in section 403 provides reasonable size limitations which will enable the trucking industry to increase its productivity and provide more efficient transportation service to the Nation.

SECTION 404 NATIONAL UNIFORM STATE REGULATION

Section 404 of S. 3044 contains the Department of Transportation's (DOT) proposed "solution" to non-uniform State taxation and regulation of interstate trucks. The proposal was precipitated by DOT's study mandated by Congress in section 19 of the Motor Carrier Act of 1980, Public Law 96-296. The study was supposed to have been completed last January. Contrary to the law, the report and recommendations were released just this week and, in fact, have not yet been printed or made available to motor carriers, the States or Members of Congress.

The trucking industry supports the concept of State offficials and industry representatives working with Federal officials to seek a resolution of these intolerable problems. However, we do not feel that the proposed approach in section 404 is necessarily the best or quickest way to resolve the problems.

Although the section provides for the establishment of a "working group" of State officials to advise the the Secretary of Transportation, he is granted authority under the provisions of this section to establish any standards with or without regard to their recommendations. Section 404, in other words, gives the DOT Secretary virtually carte blanche preemptory authority over a variety of State taxing and regulatory mechanisms.

The proposal is technically deficient in several areas. For example. The section provides for standards governing the collection of "third structure taxes." That term is not defined in the bill. We don't know, the States don't know and the DOT doesn't know what taxes might be embraced in this virtually unlimited congressional delegation of authority.

Furthermore, the proposal provides for standards governing the collection of "fuel taxes," although the DOT study addressed only fuel use reporting laws. Definitions are needed here if the authority given the Secretary is to be less than all encompassing.

Finally, the proposal contains no authority for enforcement of the standards.

Section 404 hints at the development of "solutions" to the pressing problems of State taxation and regulation over 30-month period before implementation. In some areas, action should come quicker, while in other areas the 30-month period may not be adequate or fair to both the States and the industry.

In sum, this type of legislation deserves more careful consideration by the industry, the States, and the Congress. We therefore urge the committee to recommend deletion of this section of the bill and reschedule consideration in the next session, when those affected by the proposal can provide their thoughtful comments on this

type of preemptive legislation, and suggest the needed technical language to implement properly the congressional intent. This would give sufficient time to consider legislation which would deal with these pressing problems in an enlightened manner and a shorter overall time.

SECTION 405 MINIMUM FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Section 30 of the Motor Carrier Act of 1980 established minimum levels of financial responsibility for motor carriers. It raised the insurance level of the for-hire transportation of nonhazardous commodities in interstate and foreign commerce from $300,000 per occurrence to $750,000. It introduced two additional levels of financial responsibility in the transportation of hazardous commodities, which are applicable to interstate and intrastate (but not foreign) transportation, and which must be maintained by private as well as by for-hire carriers. Specifically, it established a minimum level of $5 million for the transportation of hazardous substances and extra hazardous materials and a minimum level of $1 million for the transportation of all other hazardous materials.

These minimum levels were to go into effect by July 1, 1981, but section 30 of the Motor Carrier Act gave the Secretary discretion to reduce these upper minimums to $500,000, $1 million, and $500,000, respectively, for a 2-year phase-in period.

Now the Secretary is proposing changes in section 30 of the Motor Carrier Act which would have the net result of making four substantive changes in the financial responsibility requirements for motor carriers. ATA's position on each of these changes is as follows:

ELIMINATION OF THE FINANCIAL RESPONSIBILITY LIMITS SET FORTH IN SECTION 30

The Secretary proposes that Subsections (a)(2), (b)(2), (b)(3), and (b)(4) of section 30 be amended in a fashion which would allow elimination of the insurance levels previously mandated by Congress. The Secretary also proposes that he be granted authority for establishing insurance levels by regulation and that the current deadline of July 1983 for setting levels mandated by section 30 be eliminated.

The trucking industry is strongly opposed to these proposed changes. The Secretary has submitted a report to Congress on financial responsibility levels which included evidence that the higher levels mandated by section 30 should be retained. The Secretary's report specifically shows that lower limits of financial responsibility will result in inadequate protection of the public. Higher limits, as demonstrated by the Secretary's report, are an incentive for reducting accident potential and thereby provide greater protection for the public from the occurrence of accidents. Higher limits provide better compensation for public loss given the occurrence of an accident and this is essential in view of increasing accident costs resulting from higher medical costs, higher legal costs, higher environmental costs and the overall increases in the number of high cost accidents. For example, truck-related accidents costing $1 million or more numbered 20 between 1962 and 1969, but that number increased to 267 for the period from 1970 to 1978. DOT itself has stated: "Easily, the trend is to a rapidly rising frequency of million dollar suits and settlements. Considering this, a motor carrier who operates on the premise that it will pay liability claims from its operating income may be making an ill advised financial decision." (Report, Appendix A, p. 25.)

We feel the limits now set forth in section 30 of the Motor Carrier Act must be retained to protect the public from losses resulting from higher accident costs, and from the motor carrier which makes the ill-advised financial decision of not carrying sufficient insurance.

The trucking industry urges Congress to assure that the upper limits for minimum levels of financial responsibility are established by the Secretary. A proper phase-in period has already been allowed for carriers of all sizes to adjust, and it is now time to set the upper limits. We urge Congress to reject DOT's recommendations for revisions of section 30 which will lead to lower limits. Minimum levels of financial responsibility should not be set by regulation but rather by legislation. Section 30 of the Motor Carrier Act of 1980 was very clear in recommending the upper limits for the long term and DOT has shown no justification for contradicting sound judgment and legislative precedent.

APPLICABILITY OF FINANCIAL RESPONSIBILITY REQUIREMENTS TO FOREIGN MOTOR CARRIERS TRANSPORTING HAZARDOUS MATERIALS

The Secretary proposes amendments to Subsections (b)(1), (b)(2), (b)(3), (b)(4), and (f) of section 30 of the Motor Carrier Act of 1980 so that the financial responsibility

requirements for hazardous materials will be applicable to transporters in foreign commerce. Transporters in foreign commerce are subject to financial responsibility requirements for transportation of nonhazardous materials but they are not now subject to the requirements applicable to hazardous materials transportation.

ATA supports these amendments. They represent sound proposals which will enhance safety and ensure the best protection to the public, should an accident occur. It is logical that all transporters of hazardous materials—whether in intrastate, interstate, or foreign commerce—should have the same financial responsibility requirements since the potential for accidents of a severe nature is the same for all.

APPLICABILITY OF FINANCIAL RESPONSIBILITY REQUIREMENTS TO SMALL VEHICLES TRANSPORTING EXTRAHAZARDOUS MATERIALS

The Secretary has proposed amendments to subsection (f) of section 30 of the Motor Carrier Act of 1980 that would make vehicles of less than 10,000 pounds transporting extrahazardous materials subject to higher insurance limits. At present, the provisions of section 30 do not apply to any vehicle of less than 10,000 pounds GVW.

ATA does not oppose this revision of section 30. It appears to be a sound proposal which will enhance safety and increase the protection of the public.

APPLICABILITY OF FINANCIAL RESPONSIBILITY REQUIREMENTS TO TRANSPORTERS OF HAZARDOUS MATERIALS IN SMALL QUANTITIES

The Secretary proposes amendments to subsection (b)(3) of section 30 of the Motor Carrier Act of 1980 to provide an exemption for those carriers which transport in interstate commerce hazardous materials in small quantities from the requirements applicable to hazardous materials transporters.

We have no objection to the exemption for small quantity transportation of hazardous materials since the accident potential of small quantity hazardous materials carriers does not differ greatly from that of vehicles transporting nonhazardous materials.

However, the financial responsibility provision for small quantity hazardous materials transportation should be the same for intrastate as well as for interstate commerce. DOT itself points out that, "from a public safety point of view, there is no difference between the intrastate and interstate transportation of small quantities . . . " (Report, p. 38).

We would therefore propose that small quantity transporters of hazardous materials, in both intrastate and interstate commerce, be covered by the same financial responsibility requirements applicable to transportation of nonhazardous materials to assure that the requirements are uniform for intrastate and interstate transportation of small quantities of hazardous materials.

SECTION 406 FEDERAL-AID MOTOR CARRIER SAFETY PROGRAM

Proposed section 406 would establish a program for State enforcement of Federal safety requirements applicable to both intrastate and interstate truck operations.

Unlike section 404, a substantial amount of coordinated effort has gone into this proposal. The proposal is similar to provisions which were contained in the Truck Safety Act of 1979, S. 1390, introduced by Senator Charles Percy and others. ATA, among others, worked closely with Senator Percy and gave strong endorsement to that legislation because it promoted uniformity of truck safety regulations among the states and because it had the potential for increased enforcement of safety regulations.

We are now voicing our support for the provisions of section 406. It is needed to provide uniformity of truck safety regulations from state to state; to promote effective safety requirements for intrastate truck operations in those states which do not have a body of sound truck safety regulations at this time; and to increase the enforcement capability of the Bureau of Motor Carrier Safety of DOT which has been woefully inadequate for many years.

We believe that a Federal-Aid Motor Carrier Safety Program has the potential for better identification of those truck operations that are unsafe, and for bringing about either their improvement or their removal from the highways.

SECTION 407 MOTOR CARRIER SAFETY: PENALTY AUTHORITY

Section 407 provides for the imposition of civil penalties in varying amounts for violations of Federal record keeping requirements and other requirements. The

highest penalties would be imposed for those violations which create a substantial risk to public health and safety.

While a first glance might cause one to agree with these new penalties, enactment of this section would more often than not result in an assessment of penalties for violations of regulations which neither impair safety nor establish a hazardous situation. Too often civil penalty provisions are not focused on serious violations, but rather on minutia.

For example, under the civil penalty provisions of the Hazardous Materials Transportation Act, Public Law 93-633, motor carriers have paid thousands of dollars in penalties for minor technical violations of shipping paper requirements. Yet such violations have not resulted in an unsafe condition in the transportation movement nor in the availability of less information for fire and emergency personnel in the event of an accident. These penalty assessments have ranged as high as $66,000 for one particular carrier which handles numerous hazardous materials shipments and had several minor violations.

Another concern we have is that the civil penalty provisions would be imposed in a highly inequitable fashion. They would be applicable only to interstate, not intrastate, carriers. Moreover, carriers which are easily located would be penalized more frequently, and to a greater extent, than other carriers which do not conduct high visibility enterprises. And yet the carriers which are the easiest to locate generally have a substantially better safety record because they are already being inspected more frequently and because they already have programs to correct safety violations.

It has been our experience that some regulators imposing civil penalties seem intent on harassment and intimidation, or at least do not have a good understanding of the safety values of the type of violation for which a civil penalty is being imposed. For example, one carrier was penalized $9,000 for three minor shipping paper violations under the Hazardous Materials Transportation Act. These violations were a result of omissions from one shipper which did not impair the safety of the transportation or reduce the amount of information available for fire and emergency personnel.

In contrast, another carrier, which has an inoperable remote control valve on a tank truck, was fined $3,000 for the violation. That particular violation is much more serious and yet the shipping paper violation carried the same penalty.

There are hundreds of specific requirements contained in the Federal Motor Carrier Safety Regulations. Violation of many of them would not result in an unsafe condition or impair the safety of vehicle operation in any way. ATA does not feel that civil penalties are justified for such violations. An order for abatement is appropriate. Yet experience with implementation of the civil penalty provisions of the Hazardous Materials Transportation Act, leads us to believe that the focus will be upon just such violations.

There are now several governmental tools which can be used by the Department of Transportation to assure compliance with Federal Motor Carrier Safety Regulations. The most effective enforcement tool available to the Government at this time is the provision for placing drivers and vehicles out of service if they are found to be imminently hazardous. By this action the unsafe driver or vehicle is immediately removed from the highway. This is a costly penalty because of the economic ramification of tying up the driver and vehicle. Utilization of the driver and vehicle is lost. There are possible expenses for driver meals and motel costs. There are costs for vehicle repair and tow truck services. And there is a potential for incurring the ill will of customers due to the delay of freight. This mechanism focuses upon important safety violations, and is more likely to upgrade safety compliance than are civil penalties.

Terminal and roadside inspections provide another strong impetus for safety by establishing a pattern of carrier compliance or noncompliance. When an adverse carrier pattern is discernible, it is the basis for forceful action by the regulatory agency. In the past, such action has taken the form of either putting the carrier on notice that it must improve its compliance or legal action will be taken. As an alternative, the carrier is placed under consent agreement.

Civil penalties for record keeping violations have been in effect for many years under the authority of the Interstate Commerce Act which has been transferred to the Secretary of Transportation. They are more equitable than the penalties proposed because the recordkeeping penalties are usually imposed after a pattern of violations is established.

In conclusion, we believe that compliance with highway safety regulations can be achieved by the Government by increased use of the tools now available: Consent agreements, imposition of civil penalties for recordkeeping violations, placing vehi-

cles and drivers out of service for immenently hazardous conditions, and/or criminal action. The proposed provisions of section 407 are unnecessary and will result only in harassment to the trucking industry.

The CHAIRMAN. Next we will take Mr. R. V. Durham, representing the International Brotherhood of Teamsters.

At the request of Senator Pressler we will call Mr. Perry as the next witness after we finish Mr. Durham.

Go right ahead, sir.

STATEMENT OF R. V. DURHAM, DIRECTOR OF SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ACCOMPANIED BY BARTLEY O'HARA, LEGISLATIVE COUNSEL, AND WARREN RHEAUME, ASSISTANT, DIVISION OF SAFETY AND HEALTH

Mr. DURHAM. Good afternoon, Mr. Chairman.

My name is R. V. Durham and with me today is Mr. Bartley O'Hara, legislative counsel, and Mr. Warren Rheaume, assistant in my department. We appear here today on behalf of our general President, Mr. Roy L. Williams.

Mr. Chairman, with your permission we would like to offer our complete statement to be made part of the record, if you would please.

The CHAIRMAN. It will be in the record.

Mr. DURHAM. We are pleased to again be before this committee testifying on an issue of importance to all of us, and that is truck safety. I would like to take just a few minutes to give you our thoughts on the sections of S. 3044, the Highway Act, as they relate to the safety of trucks on our Nation's highways.

Before we discuss the safety issues, we would like to express our support for the 5-cent fuel tax proposal and reasonable related tax increases. We recognize the deteriorated condition of our highways and the urgent need to immediately begin rebuilding this facet of our transportation system and a greater good will be realized by creating jobs for our unemployed.

As you know, our members in the trucking industry have been rocked by the twin blows of deregulation and recession and many companies stand on the brink of bankruptcy. For that reason we urge moderation in setting these tax levels so as not to force yet more companies out of business and more employees into the unemployment lines.

We also support the proposal to establish a nationwide maximum gross vehicle weight of 80,000 pounds with a single axle weight of 20,000 pounds and a tandem axle weight of 34,000. This move to national uniformity will not only solve many of the safety problems of truck drivers that we have presented to you in past meetings, but it also would provide greatly increased productivity. Similarly we recognize that some gain in productivity will be realized by increasing permissible truck width to 102 inches. In deference to you, Mr. Chairman, we do support such a change.

In recent years many of our members have found themselves literally squeezed out of their truck cabs, as Senator Cannon made reference to. As carriers began to operate longer trailers in an effort to carry more freight, they were forced to use smaller and

smaller tractors to stay within the overall length limits imposed by many States.

As a result, drivers are faced with severe restrictions in these smaller tractors to the point where some drivers literally cannot fit behind the steering wheel. This is a serious problem and as a recent study by the Society of Automotive Engineers indicates, the bodies of truck drivers are significantly larger than those of the population as a whole.

Section 403 of the proposed act will establish a uniform Federal length system which leaves the tractor unit completely out of the length equation. With such a system in place carriers will be able to purchase and operate equipment which best serves their needs and most importantly the physical needs of our members rather than being forced into buying the extremely short-wheel based equipment so prevalent today.

Further, manufacturers will be able to use their best engineering judgment to make tractors safer and most serviceable rather than being pressured only to make them shorter. We endorse and support a vehicle length limit of 48 feet on semitrailers operating in a truck-tractor semitrailer combination and 28 feet on a semitrailer or a trailer operating in a truck-tractor semitrailer/trailer combination, in addition to the provision allowing twin trailers on a nationwide basis.

Section 405 amends the Motor Carrier Act of 1980 with respect to the levels of financial responsibility required of motor carriers. We have been extensively involved in the issue both legislatively during passage of the act and during rulemaking before the Secretary of Transportation. We are disturbed by section 405. While it does take a step forward in subsection F by requiring insurance on vehicles under 10,000 pounds gross vehicle weight which carry explosive poison gas or radioactive materials, the section at the same time backs away from a congressional policy of 2 years ago which was a commitment to the public that carriers would be required to carry insurance adequate to compensate victims of truck accidents.

The congressionally mandated insurance requirements were scheduled to take effect in 1983, but section 405 as drafted would permit the Secretary of Transportation to set lower limits, limits which may not protect the public. We urge the committee to allow section 30 of the Motor Carrier Act to remain in full effect and amend section 405 accordingly. We would also encourage the inclusion of private carriers in such a provision.

Section 406 of the act will allow States to take a more active role in motor carrier safety enforcement. By allowing criteria for States who want to assume enforcement authority and providing funding to assist those States, section 406 will multiply the number of inspectors on the highway and hopefully decrease the number of defective trucks in operation. At a time when roughly one-third of the trucks inspected, and I believe it was 36 percent this past May that were inspected by the Bureau of Motor Carriers Safety and found unfit to be on the road and placed out of service, the public and our members can only stand to gain from such Federal/State cooperation.

Section 407 is an effort to expand the authority of the Secretary of Transportation to police motor carrier safety. While we applaud

the intentions of those who drafted this section, in our view it contains several defects. The most significant of these are contained in subsection B-3 which would expose an employee to a civil penalty liabilty of $5,000 per day for a violation of safety regulations.

An employee violating the law currently faces not only State civil and criminal sanctions, including loss of license, but would also face disciplinary action by his or her employer which may consist of the loss of jobs. To add such a heavy Federal penalty onto those that presently exist seems to me to be a gross injustice and sort of a triple jeopardy.

Instead of the language in section 407, we recommend to the committee the language of S. 1390, the Commercial Motor Vehicles Safety Act of 1979, a bill which was reported unanimously by this committee in the last Congress and was passed overwhelmingly by the Senate. I believe it was only seven votes against S. 1390. That bill was a masterful compromise of competing interests and one which would greatly increase highway safety without imposing an undue burden on the industry. We strongly recommend the committee carefully consider that language as an alternative to section 407.

S. 1390 not only contains a better version of the stengthened enforcement authority contemplated by S. 3044, but offers other vital provisions such as an increased inspection authority for the Secretary and so-called whistle blower protection for employees who report safety hazards.

Regardless of how many inspectors, Senator, that are added on the highways, we believe that this whistle blower provision in S. 1390 would be a tremendous help because many of the drivers do not enjoy protection of a labor contract and they are fearful as far as reporting these types of violations. We were also pleased to hear the American Trucking Association express a few minutes ago support for S. 1390.

In conclusion we appreciate the opportunity to express our position on this important legislation and stand ready to work with the committee in the interest of highway safety.

We thank you for this opportunity to be here with you and we would be pleased to answer any questions you might have.

The CHAIRMAN. Mr. Durham, I have no questions. As I indicated before, this particular topic is one that this committee has been over innumerable times and I hope that we go over it for the last time and manage to put it out as part of a comprehensive part of this gasoline tax bill.

Your comments are very well taken.

Mr. DURHAM. Thank you.

The CHAIRMAN. Larry?

Senator PRESSLER. I have no questions except to thank the witnesses and say that we have gone over this before many times and I have had many questions in the past and I think most of them have been answered in this particular area.

The CHAIRMAN. I don't think, Larry, there are any new questions from the last hearings we have had.

Gentlemen, thank you.

Mr. DURHAM. Thank you.

The CHAIRMAN. Now, as I indicated, as a courtesy to Senator Pressler, we will take Mr. Mark Perry next.

STATEMENT OF MARK PERRY, GOVERNMENT AFFAIRS DIRECTOR, OWNER-OPERATORS INDEPENDENT DRIVERS ASSOCIATION OF AMERICA

Mr. PERRY. Thank you, Mr. Chairman, Senator Pressler.

Mr. Chairman, Senator, my name is Mark Perry and I am here today testifying on behalf of Owner-Operators Independent Drivers Association of America. We have been asked to testify on Title IV, Highway Safety Authority, that part of S. 3044, the Highway Revenue Act of 1982 which deals with truck sizes and weights, insurance, uniformity of State regulations and safety.

Mr. Chairman, my remarks here today will be very brief.

As is well known, our association in the past has been a strong proponent of uniformity of truck sizes and weights. We are pleased that this committee has taken an interest in legislation which would lead to such uniformity. We endorse the position outlined in S. 1402 and we agree that increased sizes and weights, including a width standard, would increase our members' productivity appreciably.

We agree and strongly endorse that part of title IV which would mandate uniformity, though I must add that my members have told me that they are very disappointed that the uniformity will not take place until individual States conform to the statute or at the very latest until October 1, 1984.

The taxes mentioned in the bill will go into effect in the summer of 1983, but the gains in productivity from the increased sizes and weights, which will in no way offset the increases in taxes, will not become operative until much later. We are hoping that this very major concern can be adequately corrected by this committee and we urge this committee to move up the effective date of the weights and lengths provisions to title IV.

We also endorse that part of title IV establishing a working group to deal with the lack of uniformity in State permitting and licensing regulations. Preliminary work in this area under the section 19 study conducted by the Department of Transportation is proof that problems which impair productivity do exist in this area and that we must take steps to remedy those problems while guarding the rightful jurisdictions of the States.

We also endorse that section of the bill which allows the Secretary of Transportation to have authority in setting lower insurance minimums than those contained in the Motor Carrier Act of 1980. The increase in insurance minimums has had a detrimental effect on owner-operators and we certainly hope that the Secretary of Transportation finds that lowering those minimums will not impair public safety.

The part of the bill addressing the various safety concerns of the public is long overdue. By allowing the Secretary of Transportation to oversee State safety programs and by allotting resources to States to enforce those regulations, I am certain we can maintain the already exceptional safety record of the trucking industry. In concert with uniform State regulations in permitting and licensing,

uniformity in this area will go far toward keeping our highways safe.

I must add, Mr. Chairman, that we are much maligned in the area of safety. We are viewed as being opposed to safety, but in fact quite the contrary is true. Safety programs save lives, truck lives as well as the lives of others who use the highways. The only thing we are opposed to are measures that are not uniform and that are designed only to raise revenues.

We have a good safety record and we are proud of it. We are willing to work with the Department of Transportation and we have been working with the Department of Transportation to make our already excellent record even better.

Mr. Chairman, I have been cautioned to keep my remarks today on that part of the bill dealing with truck sizes and weights, insurance, uniformity of State regulations and safety portions of S. 3044. I have done so.

But in conclusion, I must say that after receiving numerous calls from members of our association in South Dakota, Missouri, Oregon, the Pacific Coast Owner-Operators Association, and Delaware, in essence from every part of the Nation, I can say with certainty that if S. 3044 is passed with or without the increased productivity offered by title IV, it will destroy our industry.

I thank you for this opportunity to express the views of the members of my association.

The CHAIRMAN. Mr. Perry, thank you very much.

Larry.

Senator PRESSLER. Mr. Perry, in your testimony you said that this bill would destroy the motor carrier industry. Could you briefly outline the impact that this bill will have on owner-operators?

Mr. PERRY. I think the most onerous part of this bill, Senator Pressler, is the heavy use tax as written. For a five-axle tractor/semitrailer the current heavy use tax is $210 and under the bill it would be increased tenfold, almost to $2,300.

I had the opportunity last night, Senator Pressler, of speaking to some of your constituents in South Dakota and they mentioned your long-time support of owner-operators and of truck size and weight, but they also told me that if we are to accept heavy use taxes in order to get weights and lengths, the weights and lengths just will not be worth it.

Senator PRESSLER. Now they talk of productivity gains provided for in this bill because of the weights and lengths provision. Will these be offset by the part of the bill that deals with taxes?

Mr. PERRY. I think the productivity gains to be made from knocking down the barriers imposed by the barrier States, Illinois, Missouri, and Arkansas will be negligible at best. It will be at best an end to harassment.

What we have to do, Senator, is if we accept the truck taxes in the bill, we have to come up with $4,000 according to our calculations in order to just offset those taxes, and I don't see how weights and lengths will net us $4,000 in extra income.

Senator PRESSLER. My last question is that you paint a very bleak picture for the future of the owner-operators if this bill is passed, and I guess the bill will have a lot of different things in it when it gets all tied together, although this committee is not deal-

ing with taxes. Would the problem of the owner-operators be alleviated if the Senate were to accept some kind of compromise in the tax package and what do you recommend?

Mr. PERRY. I have seen one proposed compromise by the American Trucking Association. According to our members, even the compromise would increase our taxes 70 percent. The American Trucking Association has also said that we have endorsed such a compromise and we in no way endorse any such compromise. We would be willing to accept, and we think it would help our Nation's highway building program and maintenance program if we could accept a 5 cent a gallon increase and we would do so.

Some of my members last night called and said is it possible to put some of the increases on the pumps so we could pay it right at the pump. In going over some calculations this morning, the tax increase I would put on the pump would be so enormous that I doubt that the Senate or the House would enact it.

What my members are saying is in fact that it is much easier to pay right at the pump in drips and drabs than in one lump sum at the end of the year, and this is really what is bothering me.

Senator PRESSLER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Perry.

Mr. PERRY. Thank you.

The CHAIRMAN. Next we will take Mr. John Kuster, the president of the National Industrial Transportation League.

STATEMENT OF DONALD F. KUSTER, PRESIDENT OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE AND GENERAL MANAGER, TRAFFIC AND DISTRIBUTION, CONTINENTAL CAN CO., U.S.A., ACCOMPANIED BY JAMES E. BARTLEY, EXECUTIVE VICE PRESIDENT

Mr. KUSTER. Good afternoon, Mr. Chairman.

My name is Don Kuster. I am president of the National Industrial Transportation League. I am also employed as general manager of traffic for the Continental Can Co.

With me today is Jim Bartley, the executive vice president of the National Industrial Transportation League.

I am appearing here today to support the objectives of the legislation which includes proposals to improve the productivity of our Nation's highway system through specific changes to the dimensional limits governing commercial motor vehicles using this system.

The National Industrial Transportation League is a voluntary association of 1,500 shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, freight, and transportation services for all modes. It is the only nationwide organization representing all types of shippers using all modes of transportation to move all types of commodities. Our members, directly or indirectly, are responsible for the routing of the majority of our country's commercial freight.

At this point I would like to say I would like to save some time by giving a brief statement, but ask that the entire statement be entered into the record.

The CHAIRMAN. Go right ahead.

Mr. KUSTER. The league supports, as I said, the objectives of this legislation. It is however critically important to U. S. producers that this legislation continue to link the funding and productivity issues so that goods continue to be distributed in the most cost-effective manner possible.

When we talk about productivity, we think of it in the sense of being limited to just the truck. However, it is the commodities that go into that truck, and how we ship and load them that are important. Productivity is immensely important to the entire logistics system of this Nation, and to the shippers that we are talking about today. Thus, one just cannot look at the fuel efficiency as the only issue at stake. It is much broader than that. It involves a wide variety of issues including how many telephone calls you make to secure transportation services, and how many different trucks are needed to do the work.

The league believes that S. 3044 and related measures represent a reasonable first step toward achieving an equitable balance of the need of all interests. However, we would offer some suggestions or improvements to help better achieve our mutual goals of assuring the most efficient use of the Federal Highway System.

The league has been very active on this issue. Earlier this year, we supported S. 1402 and some of the suggestions we make today are included in that bill, which was approved by your committee.

The first suggestion we offer is a clarification of the length provisions to ensure that current productivity gains are not eroded. This would be accomplished by inclusion in the legislation of the following:

"No state shall establish, maintain or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions that were in actual and lawful use in such States as of December 1, 1982."

The second is to make the 102-inch width provision a mandatory minimum limit. Like the length clarification, this is necessary to prevent any erosion of current productivity level.

I would like to note that the 102-inch limit is a very, very vital part of this legislation. It changes the entire complexion of how many different types of products will be distributed and received. In some instances, it will mean increasing productivity of a trailer by 36 percent.

The third suggestion is to apply these dimensional limits to the Federal primary highways as well as the interstate system, so that maximum productivity can be achieved. There has to be reasonable access to the Federal Highway System from all industrial firms of this Nation, not just those that are right on the interstate system.

The fourth suggestion is that these dimensional limits be allowed to take effect immediately so that we can begin to use these increased productivity gains.

The final suggestion is there be a uniform standard for providing access to and from the highway system which is structured in such a way to fully recognize safety concerns.

I would be glad to answer any questions.

The CHAIRMAN. Larry?

Senator PRESSLER. No questions. Thank you.

The CHAIRMAN. Again I have no questions. Thank you very much.

Mr. KUSTER. Thank you.

[The statement follows:]

STATEMENT OF DONALD F. KUSTER, PRESIDENT, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Chairman Packwood, members of the committee: My name is Donald F. Kuster. I am president of The National Industrial Transportation League. I am appearing today to support the objectives of legislation which include proposals to improve the productivity of our national highway system through specific changes to the dimensional limits governing commercial motor vehicles using this system.

The National Industrial Transportation League is a voluntary association of 1,500 shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, freight, and transportation services of all modes. It is the only nationwide organization representing all types of shippers using all modes of transportation to move all types of commodities. Our members, directly or indirectly, are responsible for the routing of the majority of our country's commercial freight.

The League's primary concern is to assure that our highway transportation system meets the needs of the nation as well as the needs of shippers and receivers of commercial freight. To arrive at the policies and positions reflecting our broad range of interests, League members, at least annually, consider, debate, and vote on pertinent transportation issues. Throughout our more than 75-year history, the League frequently has been the spokesman for business and industry on transportation matters.

The League has long recognized that the federal highway and bridge systems are crucial to U.S. producers' efforts to efficiently and safely move our country's commerce. We agree that additional funds are now needed to repair and maintain these systems so that our Nation's goods can continue to be distributed without diminished productivity or safety.

The League has actively been involved in efforts to ensure adequate funding of these systems, as well as to remove those barriers impairing their most productive use. During the 97th Congress, we have supported S. 1402, Commercial Motor Vehicle Act of 1982, as well as H.R. 6211, Surface Transportation Assistance Act of 1982, because we believe that these measures represent a balanced compromise for achieving productivity improvements benefitting shippers, carriers, and, ultimately, the public.

The League supports the objectives of the legislation under consideration during this lameduck session, because it appears to address our dual concerns of providing adequate funding for these systems, and promoting the systems' efficient use.

It is critically important to U.S. producers that S. 3044, Surface Transportation Act of 1982, continue to link the funding and productivity issues, so that goods continue to be distributed in the most cost-effective manner possible.

In reviewing S. 3044 and other related proposals, the League believes that the provisions on the minimum truck dimensional limits represent a reasonable first step toward achieving an equitable balance of the needs of all interests. However, we would offer some suggestions or improvements to help better achieve our mutual goal of ensuring the most efficient use of our Federal highway systems.

One improvement is a clarification of the length provision. This clarification is aimed at preventing any inadvertent lessening of the productivity levels now available. It was included in S. 1402. This clarifying improvement would state: "No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such States on December 1, 1982."

At present, 47 States allow cargo-carrying units of 48 feet; 36 of these States permit cargo-carrying units of greater than 48 feet. For your information, committee staff has been supplied a map outlining current State length limits. Because S. 3044 would prohibit States from establishing an overall length limitation, many of these States will have to rewrite their laws to conform with Federal law. The League is concerned that unless this clarifying change is made, it is quite possible that the current productivity levels could be inadvertently eroded.

Including this suggested change would assure these States that Congress intends to increase the productivity of our Federal highway system. It also would remove

any doubt about what Congress expects the States to do about trucks currently operating in their jurisdictions.

Another clarification sought by the League is requiring that the 102-inch width provision be a mandatory minimum limit. Adopting this improvement would preserve the productivity levels now available to shippers and carriers in certain States, and would facilitate more efficient interstate transportation.

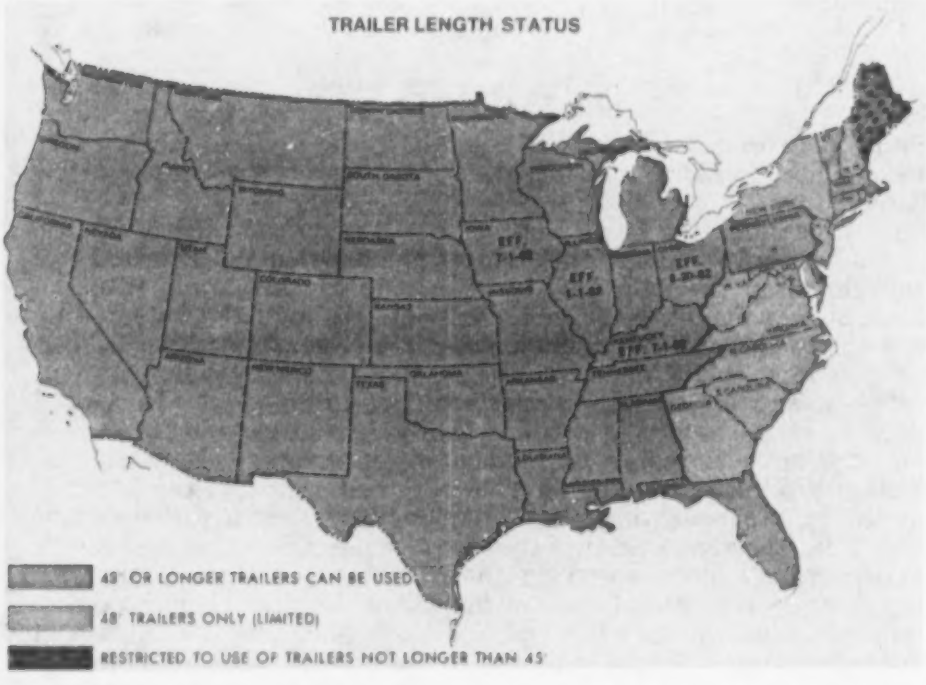
The League also would urge that, like S. 1402, these productivity improvements be extended to the Federal primary highways as well as to the Interstate System, and that they be allowed to take effect immediately. These improvements would help shippers and carriers maximize the productivity benefits generated by this legislation, which is so important in these current economic times.

In addition, the League would urge the committee to carefully review S. 3044 to ensure that the measure includes a uniform provision providing reasonable access to and from the Federal highway system. If shippers, carriers, and the public are to realize the full benefit of these productivity reforms, it is important that access rights be granted in such a manner as to provide for maximum utilization of these reforms.

In conclusion, the League believes that, with the inclusion of its suggestions, S. 3044 represents a balanced and workable approach to ensuring the continued productivity of our Federal highway and bridge programs.

We thank you for this opportunity to present the views of shippers, and look forward to working with you and your staff to ensure that our Nation's truck transportation network continues to be used in the most cost-effective manner possible. I would be willing to answer any questions you may have.

Attachment.


TRAILER LENGTH STATUS
48' OR LONGER TRAILERS CAN BE USED
48' TRAILERS ONLY (LIMITED)
RESTRICTED TO USE OF TRAILERS NOT LONGER THAN 45'

The CHAIRMAN. Mr. Dick Henderson, the executive vice president of the Private Truck Council.

Go right ahead, sir.

STATEMENT OF RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA, INC., ACCOMPANIED BY JOHN A. DeVIERNO, COUNSEL

Mr. HENDERSON. Thank you, Mr. Chairman.

BEST COPY AVAILABLE

I have with me today our counsel, Mr. John A. DeVierno of the law firm of Billig, Sher & Jones. With that, I will proceed briefly through the statement.

The Private Truck Council is the only national independent organization representing truck fleets. In addition today, our statement is supported and endorsed by the Food Marketing Institute.

We offer these five comments relative to title IV.

No. 1, productivity relief now and not later. Just following up on the previous witness, we would like to press for immediate relief in that regard. This difference we feel is critical because the administration approach as we read it would take the deadline as far as October 1, 1984, and we would like to suggest the approach to S. 1402 which allows productivity relief to go into effect immediately. Actually I believe even S. 1402 had 180-day limit there and we really don't favor any delay if we can speed it up.

Furthermore, tying the effective date as the administration bill does to the grant program leaves open all the problems of waiting for State legislatures to act and Governors' actions and so on and so forth.

No. 2, we would favor grandfather rights for equipment. The administration approach as we read it appears to omit this and we submit that the equipment within the States exceeding the limits in this legislation should be grandfathered according to section 3B of S. 1402.

No. 3, again reiterating the previous witness' concern that the productivity relief that this committee has jurisdiction over, size, should be extended as much as possible to the Federal aid primary roads subject to safety considerations only in addition to the Interstate System.

No. 4, commenting briefly on some of the safety aspects of title IV, we certainly support the idea of granting to the Secretary of Transportation the authority to determine the minimum levels of financial responsibility for motor carriers through the rulemaking process. If there are adjustments that are necessary there, we certainly endorse the rulemaking process to accomplish that.

We also support the new safety grant program for the Bureau of Motor Carriers Safety to enable the Bureau to expand its inspection program and insure uniformity of enforcement. It is that inspection program and that effort which really goes to the heart of the safety program, and that is trying to remove the defective truck from the road and it is that area where the Bureau of Motor Carriers Safety has been so seriously inhibited in these years with their limited number of safety inspectors. I think their new program following up on what the Secretary said and Mr. Barnhart has been saying will go a long way to eliminating that problem.

Finally, we would just like to offer a comment on the new level of penalties proposed in that section. I would have to say that we feel that it leaves open the door possibly to inordinately high fines and maybe leaves too much discretion to the Secretary in this regard. So we do have some reservation about that aspect of the provision.

Finally, a brief comment on the section dealing with national uniform State regulation. We feel this subject is critical and I would like to suggest that we really don't need I would hope the

committee would agree that we really don't need to wait on another study or another advisory committee to get to work on this. I believe that one study is about ready to be released per section 19. We would like to suggest that the Secretary be given the authority now to take whatever action he can to deal with those problems.

Mr. Chairman, we thank you for the opportunity of being here today and we stand willing to work with you or your staff between now and Monday if we can to help you accomplish your objective.

The CHAIRMAN. Thank you. I am inclined to agree with your statements about the studies. This is one thing we are not short of in this Government and in this field.

We appreciate it.

Mr. HENDERSON. Thank you.

[The statement follows:]

STATEMENT OF RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

My name is Richard D. Henderson and I am executive vice president of the Private Truck Council of America, Inc. We are the only national independent organization representing private truck fleets.

In addition, our statement is supported and endorsed by the Food Marketing Institute. We offer these five comments relating to title IV of S. 3044.

1. PRODUCTIVITY RELIEF NOW, NOT LATER

In this country we must do everything possible to improve productivity.

As to the truck width and length productivity relief, the 102-inch mandatory width, the right to a 48 foot trailer length, and the use of twin trailers, our first concern is the effective date. We strongly urge that the committee initiate these reforms within the drafting framework of S. 1402, which is a direct regulatory statute, rather than by tying the productivity relief to the federal highway grant program as the administration bill does, leaving the door open for delays even beyond the October 1984 date specified in the legislation.

This difference is critical because the approach of S. 1402 allows productivity relief to go into effect immediately (S. 1402 chose to delay for 180 days and we don't favor any delay), while any apporach tied to a grant program leaves the door open for delays while states pursue implementing legislation. In particular, the October 1, 1984 deadline for state action suggested by the administration needlessly delays benefits and should be rejected.

2. GRANDFATHER RIGHTS FOR EQUIPMENT

The administration approach omits this provision. We submit that equipment within the states exceeding the limits in this legislation should be grandfathered according to section 3B of S. 1402. This is a practice for which there is precedent going back to the time the Interstate Federal Aid Highway Act was passed in 1956.

3. PRODUCTIVITY RELIEF SHOULD EXTEND TO THE FEDERAL AID PRIMARY SYSTEM

We want to suggest that the productivity benefits of this legislation be extended to the Federal aid primary roads as well as the Interstate System, subject to safety considerations only.

4. SAFETY PROVISIONS

We support the idea of granting to the Secretary of Transportation the authority to determine the minimum levels of financial responsibility for motor carriers through the rulemaking process.

We support the safety grant program for the Bureau of Motor Carrier Safety. This will enable the Bureau to expand its inspection program and ensure uniformity of enforcement. It's the inspection program which goes to the heart of the safety program, removing the defective truck from the road.

We do object though, to the provision in the administration's bill that extends civil forfeiture proceedings in lieu of criminal penalties to all private carrier oper-

ations rather than those where shipments of hazardous materials are involved. We feel that except under extreme conditions, it is not good practice to allow administrative personnel of the Federal executive branch of government to in effect take on the role of a judge in court to levy and collect fines. We know it is done elsewhere and under roughly comparable conditions, but its effects are so stringent and harsh that it should never be legislated in the absence of overwhelming evidence that almost no other solution could rectify the conditions to which it is directed.

Finally, the level of penalties proposed creates the possibility of inordinately high fines and leaves too much discretion to the Secretary in this regard.

5. NATIONAL UNIFORM STATE REGULATION

Of critical importance is the Secretary's authority to develop uniform standards in this area and initiate rulemaking to promulgate regulation implementing such standards.

We do not need to wait for another study group to research this problem. We need action by the Secretary. His hands should not be tied by any working advisory group. As a matter of fact, we understand the Office of Management and Budget will release a set of final recommendations in this regard early this month.

We thank you for the opportunity of appearing before you today.

The CHAIRMAN. We will conclude with a panel of Mr. Joe Kopsick and Mr. Jim Kimble, Mr. Kopsick representing the National Association of Independent Insurers and Mr. Kimble representing the American Insurance Association.

STATEMENTS OF JOE KOPSICK, VICE PRESIDENT, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, AND JIM KIMBLE, SENIOR COUNSEL, AMERICAN INSURANCE ASSOCIATION

Mr. KIMBLE. My name is Jim Kimble. I am senior counsel to the American Insurance Association. The member companies of the association provide approximately 45 percent of the commercial auto insurance coverage nationwide.

The CHAIRMAN. Do we have a statement from you or not?

Mr. KIMBLE. Yes; you do.

The CHAIRMAN. All right, go ahead. Thank you, yes.

Mr. KIMBLE. I am here today to express the association's full support for provision 405 of S. 3044. Currently, the Motor Carrier Act constrains the regulator in that it establishes, minimum levels of insurance requirements. Those levels are mandatory and the regulator cannot go below that level.

At the moment the levels are $500,000 and $1 million, depending on the commodity being moved. As of July 1983 those limits will be kicked up to $750,000, $1 million and $5 million, again depending on the commodity being moved. The benefit associated with provision 405 is that it permits regulatory flexibility. The rulemaker is permitted, after a rulemaking process, to go below the established minimum levels in the current act.

Earlier witnesses expressed opposition to this provision. It should be stressed that the current levels which will go into effect in July 1983 remain the same. Those minimum requirements are still in the law if provision 405 becomes law.

The provision simply allows the rulemaker increased flexibilty and discretion after a rulemaking process. The American Insurance Association is convinced that at the conclusion of that rulemaking process the data collected will indicate that certainly that $5 million level, which will go into effect in July 1983, is overstated.

That is all I have, Senator.

The CHAIRMAN. Mr. Kopsick.

Mr. KOPSICK. I am Joe Kopsick, vice president of the National Association of Independent Insurers. Our association represents over 500 insurance company members who are engaged in writing property and casualty insurance, and as such almost all of them are affected by the insurance requirements of the Motor Carrier Reform Act.

I do not have a prepared statement. I can submit one later for the record, but my remarks will be extremely brief.

The CHAIRMAN. You are welcome to do so, but if we are going to mark this bill up on Monday, you had better write fast this weekend.

Mr. KOPSICK. Again, I will make my remarks extremely brief and perhaps we won't need anything for the record. I completely concur with my associate and the American Insurance Association as regards giving the Department of Transportation the flexibility to set reasonable limits.

Second, we support the recommendation to establish financial responsibility requirements for foreign transportation of hazardous materials and we also support tying in coverage under the act to DOT's placarding requirements.

One of the problems we have had in the industry with the Motor Carrier Reform Act is identifying those individuals who are subject to the act. We think tying it into placarding will go a long way in helping to identify those who require the limits.

Finally, we do support the extension of the act to cover certain vehicles under 10,000 pounds, although we do not do it wholeheartedly. We do it for the purpose of compromise.

That is my statement.

The CHAIRMAN. Gentlemen, as I have indicated before, I have no questions.

We will have our markup on Monday and my hunch is I will see most of you then.

The hearing is concluded.

[Whereupon, at 3:05 p.m., the hearing was concluded.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of the American Farm Bureau Federation

We appreciate the opportunity to present Farm Bureau's comments concerning the financial needs of the Highway Trust Fund for fiscal years 1983 through 1986. We also wish to express our concern in regard to "The Highway Revenue Act of 1982" now under consideration by your committee.

Farm Bureau is the nation's larges general farm organization representing more than 3 million member families in 48 States and Puerto Rico.

Farm Bureau's policy regarding the Federal Highway Trust Fund as adopted by the voting delegates of the Member State Farm Bureaus at the American Farm Bureau Federation's annual meeting in January 1982 states: "The Federal Highway Trust Fund should be maintained as now constituted and no further diversion of these highway funds to nonhighway-related purposes should be permitted. The Interstate Highway System should be completed at the earliest possible time. The Trust Fund should then be used for upgrading and rehabilitating the Federal-aid system."

Mr. Chairman, we support the equitable principle that highway users should pay for the cost of constructing, maintaining, resurfacing, rehabilitating and repairing interstate highways and bridges, many of which are reaching the end of their design life every year. Although highway conditions vary widely among the states, recent reports confirm the national trend that our major highway system is rapidly deteriorating in many sections of the country and that there is an urgent need for additional funding if we are to meet the Nation's highway transportation needs during the 1980's.

Farm Bureau supports many of the provisions in the legislation already approved by the House Public Works and Transportation Committee. These provisions include the 4-year funding authority; uniform maximum weight, width and length standards for trucks operating on the Interstate System; the enforcement drive against drunk driving; and the national driver registration system. These are all meritorious provisions and we hope they are favorably approved by the Congress.

We are opposed, however, to any provision in the bill that would permit the diversion of highway user revenues for such purposes as mass transit. Since 1956 Interstate construction has received the highest priority, accounting for about 60 percent of the total highway program funding. Although 94 percent of this system is open to traffic, the cost to open the remaining sections and to upgrade older sections to current standards is estimated at about $54 billion, or about 40 percent of the estimated total cost of the system. Substantial investment has been made in our highway system; however, much more needs to be invested in the present system to permit any diversion of Highway Trust Funds to mass transit.

Our position in regard to mass transit should not be construed as being opposed to assisting local and State governments with financing capital expenditures for public transit, since we recognize that public transit is an important service in many urban areas. We, therefore, suggest that the administration propose a Public Transit Trust Fund that would provide an equitable and reliable source of revenue. Users of public transportation have an interest in the transportation needs of the cities and are willing to pay their fair share of necessary financing.

We are opposed to holding the future of the nation's highway program hostage to support for public transit. Each should stand on its own merits.

Farm Bureau policy also favors the elimination of the Federal Highway Use Tax on farm trucks. We urge the committee to consider amendments to the Highway Use Revenue Act of 1982, eliminating this particular tax.

The main provision of "The Highway Revenue Act of 1982," is to increase the existing gasoline and diesel fuel tax from 4 to 9 cents a gallon. This represents a 125-percent increase in the gasoline tax. We believe the increase is excessive. Raising the gasoline tax from 4 to 7 cents would represent a 75-percent increase which we believe is appropriate at this time.

We thank you for consideration of our views on this legislation.

STATEMENT OF COMMON CARRIER CONFERENCE-IRREGULAR ROUTE

This statement is submitted by the Common Carrier Conference-Irregular Route, an affiliate of the American Trucking Associations, whose testimony we support in full. The Conference is composed of some 550 trucking companies throughout the United States that carry all types of freight. These are mostly small companies, some 40 percent grossing less than $5,000,000 per year, and many make extensive use of the services of independent contractors, or owner-operators.

The Conference is not pleading a case for additional regulation or seeking a turnback of the clock to the days of rigid or so-called protective regulations. However, we do feel we are entitled to know whether the Motor Carrier Act of 1980 as written and intended has any real meaning or force.

From academic and bureaucratic circles come continual cries for still more deregulation and freer entry into trucking. How much freer can entry get? Chairman Taylor of the Commission has been quoted in the press as saying not one protestant has prevailed in the past year. In other words, no applicant has failed to meet the Commission's test of providing a public need. The congressional report on the 1980 act first noted the retention of the traditional fit, willing and able test and then stated that, "Persons supporting the application will be *required* to come forward with *some* evidence of a public need or demand for the service." [1] (emphasis added)

To be able to prove a public need for service today should be virtually impossible because there are few shippers—other than those of extremely dangerous articles, household goods or commodities in bulk—that do not have at the very minimum 50 or so common carriers authorized to provide the desired service. What can an additional carrier offer that one or more of the existing carriers are not offering? The answer, except in very unusual circumstances, is virtually nothing.

The act says an applicant must be fit, willing and able and must serve a useful public purpose or need. So, how does the Commission read that? Our supplemental statement identifies a number of ICC cases in which variations of the following cavalier statement openly flouting the act have been pronounced by the Commission: "At the outset, we point out that evidence of either operational or financial ability no longer is required in application proceedings." [2]

According to recent ICC decisions one has to conclude there is no such thing as predatory pricing, only creative, healthy, competitive pricing. Again we have that all-encompassing, all-powerful term—competition. The Congress recognized there actually can be too much capacity when you retained the requirement that an applicant must be fit, willing and able to perform the service.

Fitness is challenged from only a safety standpoint, and then only by the Department of Transportation. A carrier's financial fitness is no longer a consideration by the Commission, and other fitness issues are no longer considered pertinent by the Commission, as evidenced in several recent cases illustrating its tortuous logic.

In one case, the applicant was accused of widespread illegal operations to the point that an ICC regional office filed a court action seeking an injunction against such operations. The applicant also was said to be intending to resist the court action. Notwithstanding all of that, the Commission then granted the applicant permanent authority to perform the service it had illegally carried out on grounds that by filing the application the applicant showed a willingness to comply.[3]

In a second case, over protests of the ICC's own Office of Compliance and the Federal Highway Administration, an individual who had openly operated for 30 years with no authority just won a certificate, an ICC law judge reasoning that the man, apparently properly, "resented government interference in his transportation activities." The judge added that those activities "were designed to meet shipper needs and applicant obviously felt that shipper considerations were more important than worrying about paperwork or under what theory of operating rights he moved his units from and to interstate destinations." [4]

Another ludicrous example was a recent application proceeding in which the sole supporting shipper was shown to have closed down its plant in the city involved. Although then left with absoutely no supporter of record, the applicant obtained the rights because the Commission held: "The member of the public whch supported

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[1] H. Rept. No. 96-1069, 96th Congress, 2d Session, 1980, p. 14.
[2] MC-26396, Sub. 401, decided November 3, 1981.
[3] MC-156384, decided August 17, 1982.
[4] MC-160432, served October 19, 1982.

that portion of the application no longer appears to have a need for service at Denver. However, it appears that a public need continues to exist for such service because the Denver facilities continue to be operated by another shipper." [5] (emphasis added)

The only criterion today is more competition at any cost—and now Mr. Taylor is indicating he might propose ending ICC regulation over rates. If the Congress does not soon raise its voice, it could very well be too late to preserve a sound for-hire motor carrier system. At the very least, it would seem that a remedial line-by-line explanation of the legislation and its history to the Commission is in order. As one section of our supplemental testimony demonstrates, a number of Federal courts interpreting the Motor Carrier Act of 1980 in a series of expensive test cases, have found the Commission repeatedly deficient in its administration of the Act, but to no avail. The ICC's errors identified by the courts are then continually ignored by the Commission in case after case.

The Commission is playing a new version of the old quiz show, "Can You Top That?" (or maybe "It Pays to Be Ignorant"?), with the previously stable motor carrier industry and our independent contractors the economic losers and the Congress the loser of its rightful legislative control.

You wrote this law, and it is increasingly evident that if it is to be maintained you will have to take the action to ensure it.

We have no objections to the Motor Carrier Act of 1980—only to its administration by the Commission. We respectfully request your assistance in giving firm guidance to the Interstate Commerce Commission.

SUPPLEMENTAL STATEMENT OF COMMON CARRIER CONFERENCE-IRREGULAR ROUTE

The Commission has ignored the requirements imposed by the Congress and interpreted by the Federal courts by its failure to consider the issue of an applicant's fitness, willingness, and ability to conduct the services proposed.

The Motor Carrier Act of 1980 amended the licensing standards for motor carriers in the area of public need for the proposed service. The act, however, recodified the "fitness" requirements which had always been a part of motor carrier licensing standards. Specifically, it adopted for an applicant seeking to operate as a motor common carrier of property a requirement that the Commission must find: "That the person is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission. * * *" 49 U.S.C. § 10922(b)(1)(A).

The act, therefore, did not change the traditional fitness requirement. Instead, the Congress employed the very requirement first adopted by it in 1935. In the report which accompanied the 1980 act, the Congress further explained the revised public need standards while noting that the act "retains the traditional test that all applicants must be fit, willing and able." H. R. Rep. No. 96-1069, 96th Cong. 2d Sess. 14 (1980).

The retention of the traditional "fitness" requirement is confirmed not only by the plain language of the statute and legislative history but also by one of the first definitive analyses of the Motor Carrier Act of 1980 addressing this issue, *American Trucking Associations, Inc.* v. *ICC*, 659 F.2d 452 (5th Cir. 1981). At page 469 of the opinion, the Court quoted extensively from the report which accompanied the Motor Carrier Act of 1980 and confirmed that the Congress intended to change the statutory fitness burden. It stated:

The statute [The Motor Carrier Act of 1980] retains, however, the "traditional test" that a certificate shall be issued "if the Commission finds—that the person is fit, willing and able to provide the transportation to be authorized by the certificate." The retention of this standard tested by forty-five years of interpretation, was deliberate. Entry was eased by revising only the "public convenience and necessity requirement to reduce the burden of proof on persons supporting the application."

The terms "fit, willing and able" convey a clear meaning. Each requirement relates to providing the "transportation to be authorized by the certificate." 49 U.S.C. § 10922(b)(1). Regardless of obligations of a common carrier that may be imposed by its status or its holding of a certificate, the statutory test requires that a carrier demonstrate all three attributes as a prerequisite to issuance of the certificate. *Id.*

In addition to the requirement that an applicant demonstrate willingness to comply with the Interstate Commerce Act and regulations under that act, the Commission must also examine an applicant's financial ability to perform the service it

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[5] MC-145454, Sub. 23, decided October 20, 1981.

seeks to provide, Autolog Corporation, Extension—16 States, 131 M.C.C. 494, 496 (1979), Eagle Motor Lines, Inc., Investigation and Revocation of Certificates, 117 M.C.C. 30, 35 (1972), and *Distributors Service Co., Extension—Foods,* 119 M.C.C. 322, 328 (1973) and must also address applicant's capability to properly and safely perform the entire service proposed, Buhr—Revocation of Certificate, 62 M.C.C. 744, 776 (1954), and Eagle Motor Lines, Inc., supra.

The requirement of fitness, willingness and ability "to provide the transportation to be authorized by the certificate" as discussed in these various cases has also been addressed in other proceedings. For example, in *Galveston Truck Line Corporation* v. *Ada Motor Lines, Inc.,* 73 M.C.C. 617, 626 (1957), this "duty" on the part of a common carrier was described as "an almost absolute one." In A.C.E. Freight, Inc., Investigation and Revocation of Certificates, 115 M.C.C. 92, 101 (1972), the Commission noted that, "Certificates are issued with the expectation that the holder will provide a service substantially conforming in scope to the rights described therein." In Braswell Motor Freight Lines, Inc.—Investigation of Practices, 118 M.C.C. 392, 409–410 (1973), the Commission repeated that it was a common carrier's obligation, inherent in the certificate issued to the carrier, that reasonably continuous and adequate service at all of its authorized points be provided, citing *A.C.E., Inc.,* supra, and *Buhr,* supra. In fact, the Commission's practice of specifically inserting into each Certificate of Public Convenience and Necessity issued to a carrier the description of this duty and responsibility has been explained as being for the purpse of buttressing "essential" statutory requirements of fulfilling the common carrier duty. Practices of Motor Common Carriers of Household Goods, 121 M.C.C. 347, 359–360 (1975).

This analysis of the requirement concerning the common carrier duty, and the consideration of a carrier's ability and willingness to perform the service proposed, it not limited to instances where revocation proceedings were brought against carriers who had failed to provide adequate continuous service to the fullest extent of their operating authority. The Commission has applied this reasoning in a fortiori manner, and has denied common carrier applications for new authority where the evidence or record reflected that the applicant either did not intend to utilize the authority contained in the certificate to its full extent, or was incapable for operational reasons of performing service commensurate with the scope of authority sought. See, eg., Midwest Haulers, Inc., Extension—Virginia Points, 124 M.C.C. 470, 476 (1976) and Kenneth Hudson, Inc., Extension—New Hampshire, 120 M.C.C. 166, 176–177 (1974).

Most recently, the traditional test which has been recodified in the Motor Carrier Act of 1980 was examined by the United States Court of Appeals for the Tenth Circuit in *Curtis, Inc.* v. *ICC,* 662 F. 2d 680 (10th Cir. 1981). There, the Court reaffirmed that the necessary consideration of "fitness" encompasses three factors:

(a) The applicant's financial ability to perform the service it seeks to provide;

(b) Its capability to provide and safely perform the proposed service; and

(c) Its willingness to comply with the Interstate Commerce Act and regulations promulgated thereunder. Id. at 685.

In reversing the Commission's grant of authority to a motor carrier applicant, the Tenth Circuit then specifically advised the Commission that the applicant was obligated to present evidence on these three requirements in order to satisfy its burden of proof.

Nevertheless, the Commission has flatly ignored the mandates established by the Congress, reiterated by various federal courts and, in fact, repeatedly discussed by the Commission itself prior to the Motor Carrier Act. In Ex Parte No. MC–77 (Sub No. 3), Elimination of Certificates as the Measure of "Holding Out," the Commission has proposed elimination of the traditional common carrier obligation which is an element of an applicant's "fitness" requirement and has proposed allowing the carrier to decide which service it might actually offer under a broad Certificate of Public Convenience and Necessity. While that proceeding has not resulted in any final regulation or policy statement and is arguably an ultra vires attempt to eliminate a portion of the statutory "fitness" requirement, the Commission has nevertheless granted scores of applications without the proper examination of an applicant's "fitness." The Conference identified in its June, 1981, statement to this Committee various representative proceedings during 1980–81 where the Commission ignored this requirement. Since that time, the Commission has continued to violate the statute despite judicial directives to the contrary. For example, in Docket No. MC–152362 (Sub No. 2), Southwest Express Co., Inc., Extension—Texas (not printed), served February 8, 1982, the Commission rejected protestants' arguments that applicant was unfit operationally and financially to perform the broad service proposed by reasoning that the protestants had not submitted evidence showing such a lack

of "fitness." This presumption of "fitness" from the mere filing of an application is not at all what the statute requires in the way of a Commission finding of "fitness."

In Docket No. MC-159188, Missouri River Trucking, Common Carrier Application (not printed), served March 23, 1982, the Commission authorized the initial certificate of a motor carrier, despite protestants' arguments as to "fitness," by reasoning simply that the applicant's president had experience in interstate motor carrier operations with other motor carriers and had been operating a local cartage operation. In Docket No. MC-104654 (Sub No. 169), Commercial Transport, Inc., Extension—Bulk Commodities Nationwide (not printed), served March 30, 1982, the Commission even concluded that an "applicant need not show ability coextensive with its proposal" and in Docket No. MC-26396 (Sub No. 401), The Waggoners Trucking, Extension—General Commodities, United States (not printed), served November 3, 1981, it dispelled protestants' evidence and arguments that applicant was not "fit," by reasoning:

At the outset, we point out that evidence of either operational or financial ability no longer is required in application proceedings. The Commission has determined that the marketplace ultimately will determine the success or failure of a proposed operation. *Id.* at 4.

In Docket No. MC-108937 (Sub No. 71), Murphy Motor Freight Lines, Inc., Extension—Multi State General Commodities (not printed), served November 19, 1981, the Commission similarly disposed of fitness arguments with an explanation that: "It is unnecessary to consider appellant's claim that applicant has failed to establish its fitness and ability to provide a competitive service. In general, however, we note that evidence of either operational or financial ability of an applicant is no longer required in application proceedings. The marketplace will ultimately determine the success or failure of a proposed operation."

Finally, in Docket No. MC-156007 (Sub No. 1), P.I.B. Trucking, Inc., Common Carrier Application (not printed), served November 20, 1981, the Commission once again ignored Congressional and judicial mandates that it demand evidence from an applicant addressing financial ability, operational capability, and a complete willingness to perform the entire service proposed.

Thus, what the Congress retained as a traditional requirement for motor carrier applicants has been studiously ignored by the Commission. Instead, the Commission has usurped the legislative function of the Congress by eliminating the statutory requirement of an applicant's "fitness" and replacing it with the Commission's own determination that the "marketplace" will later prove or disprove applicant's fitness, willingness and ability to safely and adequately perform the service. In fact, arguments as to such statutory burden are described by the Commission as being "without merit."

In recent months, United States Courts of Appeal have reversed grants of authority issued by the Interstate Commerce Commission precisely for the reason that the Commission failed to follow what these Courts have viewed as the plain language of the statute, vis-a-vis, an applicant's burden of proving fitness, willingness, and ability to conduct the proposed operations. In *Port Norris Express Co., Inc.* v. *ICC*, 687 F.2d 803 (Case No. 81-2884, 3rd Cir. 1982) the United States Court of Appeals for the Third Circuit set aside a grant of authority issued to a carrier, to the extend it included a grant of "bulk commodity" authority. The Third Circuit, following *American Trucking Associations, Inc.* v. *ICC, supra*, reversed the decision of the Commission for the reason that no evidence has been presented as to the applicant's fitness, willingness, or ability to conduct that part of the operation, and consequently, the Commission's ultimate finding to that effect could not stand. In *Coastal Tank Lines, Inc.* v. *ICC*, ——— F.2d ——— (Case No. 81-3292, 6th Cir. 1982) the United States Court of Appeals for the Sixth Circuit reversed and remanded a grant of authority of the Interstate Commerce Commission issued to a carrier authorizing the transportation of "commodities in bulk." The Court found that the Commission's ultimate finding in its operative decision that applicant was "fit, willing and able to conduct the proposed operation" was wholly unsupported by any discussion or analysis of that standard in the operative decision, nor was there any reference in the Commission decision to any specific evidence presented by applicant. In *Ritter Transportation, Inc.* v. *ICC*, 684 F.2d 86 (D.C. 1982) the United States Court of Appeals for the District of Columbia Circuit reversed a Commission grant of a restriction removal application. Applicant had held authority to transport a single commodity and sought by the restriction removal process to expand that single commodity to a broad generic classification. The Court reversed the decision, relying upon *Steere Tank Lines, Inc.* v. *ICC*, 666 F.2d 255 (5th Cir. 1982), and held that the Commission could not issue such authority without requiring of the applicant specific proof of its fitness, willingness and ability to conduct the expanded operation. In

Containerfreight Corp. v. *United States*, 685 F.2d 329 (9th Cir. 1982) the United States Court of Appeals for the Ninth Circuit set aside a decision of the Interstate Commerce Commission for failing to consider any evidence or making any findings as to the applicant's fitness, willingness and ability to conduct the proposed operation.

Thus, as can be seen, the United States Courts of Appeal for the Third, Fifth, Sixth, and Ninth Circuits, as well as the District of Columbia Circuits, have all determined that the Motor Carrier Act of 1980 specifically retained a requirement that an applicant demonstrate its fitness, willingness and ability to receive operating authority, which statutory burden of proof the Commission is studiously ignoring. The most recent example is a decision served October 12, 1982, in MC-148743 (Sub-No. 3) Joey Crawford Trucking Co., Extension—Commodities in Bulk. Despite specific challenges to this request for authority as to the absence from the record of any evidence that applicant was fit, willing or able to receive such authority, the Commission continues to conclude that, * * * evidence of either financial ability or is no longer required in application cases because the marketplace will ultimately determine the success or failure of a proposed operation.

The Commission has ignored the statutory requirement that it consider and make findings as to the effect of the issuance of a certificate on existing carriers.

Along with the requirement that the Commission find an applicant fit, willing and able, and that it conclude that the service proposed will serve a useful public purpose, responsive to a public demand or need, section 10922(b)(1) of title 49 U.S.C., as amended by the Motor Carrier Act of 1980, requires the Commission to examine opposing evidence. This section specifically requires the Commission to examine evidence presented by persons objecting to the issuance of a certificate that the transportation to be authorized by the Certificate is inconsistent with the public convenience and necessity. The Commission, however, has interpreted this provision as meaning that no evidence presented by any protestant merits consideration in terms of denying an application for new authority on the basis of inconsistency with public convenience and necessity.

Pursuasive authority for this conclusion is the incriminating fact that of the many thousands of applications filed with the Commission since July of 1980 and processed to administrative finality, not so much as a single application has resulted in denial for the reason that protestants had presented evidence that a grant of the application would be inconsistent with the public convenience and necessity. Of the few applications which have been denied and are administratively final, the denials have been exclusively based upon a failure on the part of an applicant to demonstrate that its proposed service was required by a public demand or need.

The basis and reasoning for this astonishing statistic (given the fact that by the Commission's own records, approximately 33,194 applications have been filed since July of 1980) are simply the way in which a protestant's evidence is considered.

The failure to properly examine a protestant's evidence arises from a decision made shortly after the Motor Carrier Act of 1980 was passed, and which described a protestant's burden. In La Bar's, Inc., Extension—Mountaintop Insulation, 132 M.C.C. 263 (1980), (La Bar's I), the Commission advised protestants seeking to have an application denied because of inconsistency with public convenience and necessity that they must first identify traffic and revenue which would be subject to diversion in the event the application were granted. Next, the protestant would have to identify what part of that traffic and revenue would in fact be lost to the applicant assuming a grant of authority. Thirdly, assuming a protestant is able to prove in the face of a potential competitor, what amount of traffic would be lost in the event of a grant, it must identify what such a loss would mean to its operation and what adverse effect it would have on the protestant's ability to provide service to the public. Fourthly, having passed these first three hurdles, the protestant must then prove that such loss and such effect would in fact be injurious to the public interest. The impossibility of these demands is shown by the La Bar's application itself. There, the Commission expressly recognized that the protestant would likely lose that traffic handled within the scope of the application, as specifically confirmed by the supporting shipper's own testimony, and admitted that loss might be substantial. By holding that even the bankruptcy of an existing carrier due to a grant of authority to a competitor would not be inconsistent with public convenience and necessity, the Commission granted the application.

After appeals and petitions to intervene, the Commission reopened the proceeding in order to examine, inter alia, arguments addressing the impossible burden which

a protestant would have to face under the *La Bar's* criteria.[1] On appeal, protestants and intervenors attacked the standards as unattainable and contrary to the Motor Carrier Act of 1980. The parties also requested the Commission to spell out clear and meaningful standards for protestants. By decision of December 31, 1981, and published at 132 M.C.C. 743 (La Bar's II), the Commission addressed the appeals but nevertheless sidestepped the parties' concern as to a protestant's evidentiary burden. Instead, it called the protestant's standards in La Bar's I "dicta" and simply found that the protestant had not shown that a grant of the authority was likely to harm the shipping public. As to the parties' concern for reasonably clear evidentiary guidelines for a protestant to satisfy under the Motor Carrier Act of 1980, the Commission pointed to several printed decisions decided under the Motor Carrier Act of 1980 which dealt summarily with protestants' evidence of inconsistency with the public convenience and necessity. None of these decisions, however, established specific guidelines for a protestant to follow and, in fact, these decisions and every other grant of authority under the Motor Carrier Act of 1980 appear to accept as law the impossible burden of La Bar's I. In fact, many decisions made after La Bar's I and after the April 1 notice reopening that proceeding cite La Bar's I as grounds for the denial of various protests as though it continued to be controlling precedent.[2] Similarly, many Commission decisions made even after La Bar's was reopened for correction cite La Bar's I with approval and thereby ignore protestants' evidence of inconsistency with the public convenience and necessity.

The Commission's referral in La Bar's II to the impossible evidentiary standards in La Bar's I as "dicta" and its refusal to announce appropriate replacement criteria for protestants to follow demonstrate unacceptance of the statutory requirement that the Commission examine a protestant's evidence demonstrating inconsistency with public convenience and necessity. The Commission even continued to cite La Bar's I in denials of protests after it was reopened and immortalized the standards by using them to deny protests and grant applications in decisions which are now the basis for the continued 100 percent denial of protests on the issue of inconsistency with public convenience and necessity. La Bar's I thus lives on, even if not in name, while the statutory provision on inconsistency with public convenience and necessity survives in name only.[3]

The Commission has distorted the intent of the Motor Carrier Act of 1980 in authorizing unfair competitive practices of railroads which obtain motor carrier operating authority.

The Commission has historically maintained a policy against issuance of unrestricted motor carrier operating authority to railroads or their affiliates. This policy had its origins in the motor-rail consolidation and merger section of the Interstate Commerce Act (49 U.S.C. § 213(a)(1), now 49 U.S.C. § 11344(c)). This legislation allows a railroad to acquire or merge with a motor carrier only if the Commission finds, "that the transaction is consistent with the public interest, will enable the rail carrier to use motor carrier transportation to public advantage in its operations, and will not unreasonably restrain competition." Id. The purpose of this general disallowance was to prevent monopolistic or unfair competitive practices by railroad expansion into the motor carrier field with the likely result of reducing competition between the rail and motor carrier modes.

The Commission incorporated these principles into its motor carrier operating rights proceedings under former sections 207 and 209 of the act (now 49 U.S.C. §§ 10922 and 10923) and that applicability is now a long-settled principle of law. See, e.g., *American Trucking Associations, Inc.* v. *United States*, 355 U.S. 141 (1957) and *American Trucking Associations, Inc.* v. *United States*, 364 U.S. 1 (1960).

Since the Commission recognized this prohibition should not act as an absolute bar to the issuance of unrestricted motor carrier operating rights to railroads or

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[1] While the Commission made its decision to reopen this proceeding on December 31, 1980, it did not release that decision to the public until April 1, 1981, and continued to rely upon the earlier decision in denying protests in scores of applications.

[2] *See, e.g.*, Haul Transport, Inc., MC-151417 (Sub No. 1)F, (January 29, 1981); Action Carrier, Inc., MC-149170 (Sub No. 20)F, (February 9, 1981); Drew Chrisman, Inc., MC-144030 (Sub No. 12), (March 9, 1981); Disilva Transportation, Inc., MC-17829 (Sub No. 19)F, (March 6, 1981); Thunderbird Motor Freight Lines, Inc., MC-125708 (Sub No. 187)F, (March 6, 1981); Chem-Haulers, Inc., MC-116254 (Sub No. 317)F, (February 5, 1981); Theodore Rossi Trucking Co., Inc., MC-42828 (Sub No. 22)F, (February 17, 1981); The Harbor Transportation Co., Inc., MC-98832 (Sub No. 3)F, (April 17, 1981); G.F. Trucking Company, MC-135524 (Sub No. 120)F, (May 5, 1981); Clay Hyder Trucking Lines, Inc., MC-25798 (Sub No. 401), (June 3, 1981); T.I.M.E.-DC, Inc., MC-35320 (Sub No. 624)F, (April 17, 1981).

[3] The La Bar's case is currently before the Third Circuit in *Northeast Express, Inc.* v. *ICC*, No. 81-1022 (filed January 9, 1981).

their affiliates, it formulated the "special circumstances" doctrine allowing the issuance of unrestricted motor carrier authority to railroads or rail affiliates if they could meet the additional burden of showing that a grant of unrestricted authority would not result in an undue restraint of competition, and that the public interest required the proposed operation, which was not being furnished by independent motor carriers. *B-H Transfer Co.* v. *United States*, 379 F. Supp. 1027 (D. Ga. 1974), aff'd 420 U.S. 968 (1974); *American Trucking Associations, Inc.*, supra, 364 U.S. 1; *United States* v. *Texas and Pacific Motor Transport Co.*, 340 U.S. 450 (1951) and *ICC* v. *Parker*, 326 U.S. 60 (1945). Absent these "special circumstances," the Commission can only grant rail carriers or their motor carrier affiliates motor carrier operating authority restricted to service supplemental or auxiliary to the parent or affiliated rail carrier's rail operations.[4]

The required showing of "special circumstances" has generally meant that the applicant must show "as a matter of law" that independent motor carriers are "unable or unwilling to perform the same type of service." In *B-H Transfer Company* v. *U.S.*, supra, and in Rio Grande Motor Way, Inc.—Control & Merger—Carbon Motor Way, Inc., 87 M.C.C. 479, 486 (1961), the Commission ruled that: "Ordinarily, * * * a finding of 'special circumstances' is justified only where an authorized independent motor carrier service is non-existent or not offered to the public. This means, in effect, that the conventional standard of public convenience and necessity employed in § 207 [10922] proceedings is inapplicable when the applicant is a railroad or a railroad affiliate seeking unrestricted authority. In such cases the standard is one of compelling necessity."

See also, Missouri Pacific Truck Lines, Extension—Removal of Key Points, 100 M.C.C. 677 (1966) and Consolidated Freightways Corp. of Del., extension—Phoenix, 108 M.C.C. 379 (1969).

The continual application of this "special circumstances" doctrine is thus amply documented over a span of many years. Equally well supported is the continued viability of this standard in the eyes of the Congress at the time of the Motor Carrier Act of 1980. While the Motor Carrier Act and the Staggers Rail Act of 1980 made substantial changes in the laws governing regulation of the surface transportation industry, even the Commission has formally acknowledged that the provisions of the Interstate Commerce Act which form the statutory basis for the "special circumstances" doctrine have been retained by Congress in 49 U.S.C. §§ 10101(a) and 11344(c). See, Ex Parte No. MC-156, Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates; Proposed Policy Statement, 46 Fed. Reg. 50423, 50424 (October 13, 1981). In fact, newly enacted 49 U.S.C. § 10505, which gives the Commission power to exempt rail transportation from regulation under designated circumstances, includes subsection (g)(1) which specifically excludes from that exemption authority the privilege "to authorize intermodal ownership which is otherwise prohibited by this title." Since the United States Supreme Court acknowledged in *American Trucking Associations, Inc.*, supra, 364 U.S. at 15 "that the pardoning power in this case belongs to Congress" and since the Commission has recognized the lack of any Congressional revision of this pro-competition protection, one would expect the Commission to abide by the mandates of the Congress and the Supreme Court. Just the opposite has occurred since passage of the Motor Carrier Act of 1980.

Since July of 1980, the Commission has proposed elimination or alteration of the "special circumstances" doctrine in Ex Parte No. MC-156, supra, although that doctrine has been specifically adopted by both the Congress and the Supreme Court. It has also granted railroad or railroad-affiliated motor carrier applications after giving only lip service to the "special circumstances" doctrine or completely ignoring the requirements of that doctrine. For example, in Docket No. MC-139960 (Sub. No. 5)F, WPX Freight System, Inc., Extension—Two Routes to Denver (not printed),[5] a railroad affiliate sought unlimited operating rights and the Review Board, by decision served May 28, 1981, determined that a grant of the proposed authority would be against the public interest because the applicant had "failed to establish the requisite 'special circumstances' which would warrant the prospective functionally unrestricted service." After the applicant filed in appeal, Division 2 of the Commission reversed the Board's denial and granted the application without any finding

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[4] Several exceptions to this standard have existed where (1) there is little opposition to the application; (2) loss of the involved traffic from the affiliated rail carrier is so great that the existence of rail service is threatened; (3) applicant proposes a unique and innovative service; and (4) service for small shippers at small points is shown to be required.

[5] This proceeding is on appeal with MC-139960 (Sub No. 4) and (Sub No. 6) in the Tenth Circuit in *American Trucking Associations, Inc.* v. *ICC*, Nos. 82-1115, 82-1116 and 82-1119.

of "special circumstances" and even noted that "[i]t does not appear that authorized independent carriers have declined to provide service.

In the Sub. No. 4 application of that same railroad affiliate, the Review Board approved the application in a decision served May 8, 1981, even though the application lacked any evidence establishing "special circumstances" and the Review Board decision equally ignored any discussion or finding of such circumstances. On appeal, however, Division 2 of the Commission summarily approved the authority without any additional findings as to "special circumstances" or any other justification for granting the authority.

Again in Docket No. MC-78786 (Sub No. 281)F, Pacific Motor Trucking Company, Extension—Nationwide General Commodities (not printed), served February 25, 1981, the Review Board granted unlimited authority to transport general commodities between all points in the United States to a wholly owned motor carrier subsidiary of Southern Pacific Transportation Co., a Class I rail carrier.[6] The Review Board failed to make any finding of "special circumstances" for this ultimate grant of operating rights, and the full Commission denied the administrative appeal, thus affirming the unlawful grant of authority.

Similarly, in Docket No. MC-139960 (Sub No. 6)F, WPX Freight System, Inc., also obtained unrestricted authority in a Division 2 decision served November 30, 1981, upon a bogus finding of "special circumstances" founded simply upon the National Transportation Policy directive to promote intermodalism. Other Class I rail carriers and various short-line railroads have also obtained unrestricted motor carrier authority after passage of the Motor Carrier Act of 1980 when the Commission has ignored the "special circumstances" doctrine or has merely made pro forma findings under it. The Commission has clearly ignored its own observations that the doctrine remains in existence and has been specifically recodified by Congress.

The Commission has unlawfully eliminated a statutory right to appeal provided by the Motor Carrier Act of 1980.

While the Motor Carrier Act of 1980 eliminated the multiple levels of appeals previously afforded by the act, it did retain an appeal of right as to an initial decision and provided for a further reconsideration if the action involves a matter of general transportation importance or the action would be affected materially because of clear and convincing new evidence or changed circumstances. 49 U.S.C. § 10322 (e) and (g). The Commission then adopted regulations for this dual appellate system. 49 C.F.R. § 1100.98. Under a recent series of decisions, however, the Commission has emasculated the provision for discretionary appeals, thereby repeatedly finalizing grants of applications which even the Commission has recognized to be defective.

In Docket No. MC-146251 (Sub No. 5)F, Claxton Transport, Inc., Extension—Grocery Store Commodities (not printed), served March 13, 1981, Division 1 of the Commission authorized broad operations and justified that grant of authority, in part, upon the mere fact that the application had been published in the Federal Register, thereby requiring protestants to "attack the veracity" of applicant's evidence. The Division even granted broader authority than that requested by applicant. When a protestant filed a discretionary appeal as authorized by the Commission's regulations and intended by the Congress in the procedural amendments of the Motor Carrier Act of 1980, the Commission agreed to accept the discretionary appeal and to reopen the proceeding on its own motion. It noted that the evidence appeared sufficient to allow only a limited grant of authority. The Commission ordered the applicant to show cause why it should not be granted the more limited authority. The Commission later prematurely issued a certificate for the broader authority in advance of any "show cause" evidence of applicant. By decision served October 29, 1981, the entire Commission addressed the applicant's pleading in response to the show cause order and, in particular, the applicant's argument that the Commission does not have the power to revoke the certificate previously issued to it. The Commission ruled:

"However, the requirements cited by applicant clearly provide the Commission with the power to revoke authority if a motor carrier willfully fails to comply with an order of the Commission. Failure to 'show cause' when ordered by the Commission constitutes a failure to comply with an order of the Commission and is a legal basis for revocation of applicant's certificate. While this proceeding was term a 'revocation' by our prior decision, it is more accurately described as a proceeding to void a certificate issued without an appropriate legal basis. Although we have met the

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[6] This application is on appeal in the Fifth Circuit in *American Trucking Associations, Inc.* v. *ICC*, No. 81-4389. By decision handed down July 29, 1982, and reported at 682 F.2d 487, the Fifth Circuit has stayed the proceeding pending final determination of Ex Parte No. MC-156 and certification of that decision to the Court.

technical requirements of 49 U.S.C. § 10925(b)(1), we do not believe that these are meant to be applicable in the circumstances before us.[7] We think it is clear that the Commission must retain the power to revoke certificates to the extent they exceed the public demand or need shown on the underlying record provided applicant is afforded adequate opportunity for a hearing." (Citations omitted).

Mysteriously, one week later on November 6, 1981, the Commission served a further decision by which it vacated the decision served June 23, 1981, to the extent that it recited the Commission's power to revoke the premature certificate. The November 6, 1981, decision also entirely vacated the October 29, 1981, decision. While the Commission affirmed in its November 6, 1981, decision that the earlier finding that the evidence of record did not support the full breadth of the premature certificate, it nonetheless ruled that it could not revoke that certificate despite a pending discretionary review of a Division decision. The Commission concluded that it could not revoke a certificate once it had been served, even if that service had been in error.[8]

Since the November 6, 1981, decision, the Commission has employed the unilateral construction of its own obligation to review decisions in operating rights applications to foreclose the statutory appeal right in various other cases. For example, in La Bar's, Inc., Extention--Mountaintop Insulation, 132 M.C.C. 743 (1981), the Commission partially supported its affirmance of an earlier grant of authority, argued on appeal to be in excess of the supporting evidence, with a citation to the *Claxton* decision that it could not revoke a certificate without formal revocation procedures, even on an appeal in the very same proceeding.[9] Similarly, In Hornady Truck Line, Inc., Extension—General Commodities Eastern United States, 132 M.C.C. 687 the Commission, on administrative review, noted that there had been material error in the prior grant of authority to the applicant after applying the decisional criteria adopted by the Commission under the Motor Carrier Act of 1980. But, the Commission determined on appeal that the previously issued certificate should be revoked unless the applicant could show cause why the broad grant of authority should be affirmed. Subsequently, by a decision reported at 132 M.C.C. 742, the Commission cited the *Claxton* decision of November 6, 1981, and ruled that it could not revoke the certificate on appeal even thought it had committed error in its earlier decision.

The Commission has employed the same legerdemain to dispose of statutorially recognized appeals in various other proceedings such as Docket No. MC-141033 (Sub-No. 54), Continental Contract Carrier Corporation, Extension—The United States of America (not printed), served December 7, 1981, and Docket No. MC-17600 (Sub-No. 6), Paramount Moving & Storage Co., Inc., Extension—25 States (not printed), served January 5, 1982. In each of these cases, the Commission, citing the *Claxton* decision, vacated an earlier decision to reexamine the case and ruled it could not grant the relief sought in a legitimate appeal because the certificate had already been released. It thus confirmed its error in earlier granting the applications in their entirety, but erroneously declared itself helpless to correct the error.

The Commission is attempting to eliminate the requirement of certificates of public convenience and necessity for certain regulated transportation service.

The Interstate Commerce Act, as amended by the Motor Carrier Act of 1980, of course, requires Certificates of Public Convenience and Necessity for most interstate transportation of property by motor common carriers. There are, however, certain limited exemptions from this requirement as provided at 49 U.S.C. §§ 10522-10529. In a proceeding docketed as Ex Parte No. MC-122 (Sub No. 2), Lease of Equipment and Drivers to Private Carriers, 47 Fed. Reg. 7885 (February 23, 1982), the Commission has adopted a policy statement by which it has revised the factors for determining whether transportation operations by private carriers fall outside the scope of the Commission's jurisdiction, 49 U.S.C. § 10524(a), or instead constitute for-hire transportation. At issue is the "leasing" by private carriers of equipment with drivers. In other words, the Commission has announced that it will allow certain persons to perform traditionally regulated interstate transportation for compensation, without authority, under the guise of a "lease" arrangement.

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[7] 49 U.S.C. 10322(g)(1) applies in these circumstances. Clearly, the right to change a decision of the Commission includes the right to timely revoke a certificate based upon that prior decision. Both of these changes are actions of the Commission.

[8] The Claxton case was appealed to the Eleventh Circuit in *Refrigerated Transport Co., Inc.*, v. *ICC*, No. 81-7397 and the Conference filed a brief as amicus curiae. In a decision dated September 20, 1982, at 686 F.2d 881, the Court reversed the Commission decision granting to Claxton the authority, but did not directly resolve the issue of the Commission's authority to rescind authority once issued, and based upon a discretionary appeal. See, Note 12 at page 2837 of slip opinion. But see Note 11 at pages 2836-37, thereof.

[9] *La Bar's* is on appeal before the Third Circuit in *Northeast Express, Inc.* v. *ICC*, No. 81-1022.

Historically, in any instance where a private company obtained motor vehicle equipment and driver from a single source, the owner-operator or other source of the equipment or driver was presumed to be engaged in for-hire transportation and the private carrier was presumed not to be engaged in private carriage. H. B. Church Truck Service Co., Common Carrier Application, 27 M.C.C. 191 (1940). It is this "presumption" which the Commission has eliminated by its recent policy statement.

The Conference has joined Bowman Transportation, Inc., and various other interested parties in a Petition for Review of this action, docketed *Bowman Transportation, Inc.* v. *ICC*, No. 82-8133 (11th Cir. filed March 5, 1982). We contend that the Commission has exceeded its jurisdiction by creating a wholesale exemption of a substantial class of for-hire carriage from licensing requirements enacted by the Congress. Ryder Truck Lines, Inc., has also petitioned for review of this action in the Eleventh Circuit in *Ryder Truck Lines, Inc.* v. *United States of America*, No. 82-5247, filed March 1, 1982, and the Eleventh Circuit has granted a stay pending review in each of these appeals.

The Conference does not believe the Motor Carrier Act changed the Commission's jurisdiction responsibilities. Indeed, the Congress' limited election to change jurisdiction requirement on intercorporate hauling revealed the absence of any congressional change in the licensing requirements of the Act as found by the Supreme Court in *United States of America* v. *Drum*, 368 U.S. 370 (1962), or persuasive evidence that no provisions of the Motor Carrier Act of 1980 disrupted the earlier jurisdictional authority the Commission must still serve. Moreover, the admonitions made by the Congress against master certification and against the Commission's earlier conduct beyond the powers vested in it by the Interstate Commerce Act reveal that the authority Congress delegated cannot be eroded by a policy statement.

In addition to this unlawful exercise of authority exempting a class of transportation service from the Commission's jurisdiction, the policy will be undeniably detrimental to the interests of for-hire motor carriers regulated by the Commission because of the disparate treatment they will face. While motor carriers may obtain equipment and drivers by lease from a single source, the Commission's extensive, burdensome and expensive leasing regulations promulgated at 49 C.F.R. Part 1057 apply in full to such arrangements. The Commission, however, has no regulatory authority over the practices and legitimate operations of private companies choosing to handle their own property so that those companies are relieved from having to follow the leasing regulations—all to the competitive disadvantage of the common carrier system with the primary benefit to private companies.

Similarly, the protections afforded owner-operators which lease equipment and themselves to regulated carriers are inapplicable to single-source leasing where private companies are involved. Therefore, not only are regulated carriers at a competitive disadvantage to competitive private carrier operations, but also the protections of the leasing regulations extending the benefits to owner-operators are inapplicable to such circumstances. In venturing into an area where the Congress chose not to eliminate regulation, therefore, the Commission has invited harm to the very groups which it is directed to supervise.

Statement of William H. Dempsey, President, Association of American Railroads

I am William H. Dempsey, president of the Association of American Railroads. Our members operate 94 percent of the total railroad mileage in the United States, employ 92 percent of the railroad work force, and carry 98 percent of the Nation's rail freight traffic. I appreciate the opportunity to submit our views on title IV of S. 3044, the Highway Revenue Act of 1982, for the consideration of this committee.

My statement addresses five major points:

Railroads have a direct competitive interest in highway policy;

The truck size and weight provisions of S. 3044 would reduce truck costs and further tilt the competitive balance in favor of trucks;

Railroads already compete at a disadvantage because heavy trucks pay far less than their share of highway costs;

Increased truck sizes and weights would increase highway costs and add to the heavy truck subsidy unless substantial increases in Federal user charges—at least as great as those contained in title V of S. 3044—are enacted;

Federal preemption of the states' power to regulate truck sizes and weights will harm their opportunities to increase heavy truck user charges. To minimize this

harm, higher limits should take effect only after a delay adequate to allow states to seek higher user charges in exchange for the increased limits.

THE RAILROAD INTEREST IN HIGHWAY POLICY

Highway policy is of great importance to the railroad industry, since we compete with trucks for a large and growing share of our freight. A Department of Transportation economist has estimated that railroads earn as much as 70 percent of their freight revenues on traffic that is subject to direct competition from motor carriers. This truck competition has contributed importantly to the rail industry's poor rate of return. Although our earnings have increased in the past several years, they still lag badly behind most returns earned elsewhere in the economy. In 1980, no risk Government bonds, for instance, paid interest rates of 11.4 percent. In that year the rail industry's return on investment was 4.1 percent.

One of the principal contributors to declining profits has been the pervasive competitive pressure of heavy trucking. The truck share of the intercity freight market has grown as the Interstate Highway System has grown—mostly at the expense of railroads.

PROPOSED INCREASES IN TRUCK CAPACITY

Productivity gains from increased sizes and weights have intensified truck competition. The number of states with minimum weight limits at 80,000 pounds went from 6 in 1972 to 45 in 1981, leaving just three of the contiguous 48 states with limits below 80,000 pounds. There has also been a growing use of twin trailers—only 17 states now prohibit their use.

S. 3044 would mandate further increases in truck size and weight limits. these increases would lead to substantial gains in truck capacity. Mandating twin 28-foot trailers would allow the trucking industry a 31 percent capacity gain over existing 45-foot single trailers. Increasing single trailer length to 48 feet while increasing width to 102 inches would expand cubic capacity by 15 percent.

These gains in truck cubic capacity will greatly increase truck competition for the railroads' lower density freight. The result will be lost rail traffic in such lines of business as transportation equipment, some paper products, and furniture. Particularly hard hit will be Conrail, which is unusually dependent on low density traffic.

There is a second problem. Allowing 48-foot trailers will have an especially harmful effect on our piggyback business—the hauling of truck trailers and containers on rail flatcars. Not only will direct over-the-road truck competition become more formidable, but current piggyback equipment is designed for hauling 45-foot trailers. It is impossible to put two 48-foot trailers on existing flatcars. The extensive introduction of these longer trailers will entail expensive retrofitting of existing rail equipment. Even after retrofitting, rail operations will face severe operational and cost problems. On each flatcar, railroads will have to match a 48-foot trailer with a 40- or 42-foot trailer. Inevitably equipment utilization will decline, costs will increase and service quality will suffer. Any transition to longer equipment will be far harder on the railroads than on the trucking industry. Our equipment has an normal economic life of 30 year, while the average truck trailer's life is only 5 to 7 years. Even if a transition can be made, serious operational problems may persisit in efficiently handling longer trailers, and the substantial energy and cost savings achieved by using rail piggyback service will be lost.

Finally, the weight increases included in the bill, although affecting only three States, strike at the core of rail business—heavy, high density freight. Because the three States affected are in the center of the country, more is at stake than three specific State weight limits. This provision would change the terms of competition for many transcontinental shipments.

Secretary Lewis has testified before this committee that the higher size and weight limits in S. 3044 will impose only modest losses on the rail industry. We must disagree with this assessment, which is based on an analysis originally performed as part of DOT's study of truck size and weight limits. We believe that this study seriously underestimates the extent of truck versus rail competition. For your consideration a critique of the DOT analysis is attached.

So far, my statement has addressed only current legislative proposals. It has been our experience, however, that no size and weight increase is final. Instead, each concession on size leads to pressure for further increases in weight to fill up the new space. If these increases are granted, the trucking industry will return to ask for even larger and heavier trucks. The impact on our industry of the current proposal is substantial. Increases beyond those proposed, particularly those dealing with

weight limits above 80,000 pounds, would create a major threat to the industry's financial future.

TRUCK CAPACITY AND HIGHWAY COST RESPONSIBILITY

The rail industry's objections to increasing truck weight and size limits are straightforward economic concerns. There are also major public policy questions involved. Increases in truck capacity increase the costs that trucks impose on the highway system. For any given vehicle configuration, higher size, and weight limits mean more pavement damage per mile of truck travel.

As a truck's weight increases, the stress it places on pavement rises exponentially. For example, using the formulas developed the the AASHTO road test, an 80,000 pound, five-axle truck creates 50 percent more pavement stress than a similar 73,000 pound vehicle and nearly 600 percent more stress than a 50,000-pound truck.

This increase in heavy truck cost responsibility is a very serious problem. Much of the diversion from rail to truck in past years has occurred not because of the inherent efficiencies of trucks, even at higher weights and sizes, but because trucks have not been paying their fair share of highway costs. This shortfall in truck payments has risen as the allowed size of trucks has escalated. It is one thing to lose to more efficient competitiors in the marketplace. It is quite a different situation if those losses result from ever-increasing subsidies.

THE NEED FOR INCREASED USER CHARGES

While the question of user charges falls outside the jurisdiction of this committee, the truck size and weight issue is nevertheless bound inextricably to the user charge system. Because of the direct link between truck capacity and highway costs, no size and weight increases should be granted without appropriate accompanying increases in heavy truck user charges. The trucking industry is already paying far less than its share of highway costs. Study after study has found that trucks are currently underpaying, including the recently released Federal cost allocation study Congress asked the Department of Transportation to perform.

S. 3044 contains heavy truck user charge provisions which, though based on the findings of the Federal Highway Cost Allocation Study, fall short of the full increases the study calls for—increases that, moreover, if fully enacted would not close the gap between heavy truck cost responsibility and Federal highway user charge payments. The House has already reduced these user charges to 84 percent of the level needed to recover full costs. We would urge the members of this committee to support, at the east, enactment of the full tax increases proposed in S. 3044. (See Table 1.)

The user charge provisions of S. 3044 will help put the Federal highway program on a sound footing. But the bill's size and weight provisions could seriously harm many State highway programs. By imposing minimum truck weights and sizes, the Federal Government diminishes the prospects for State user charge increases. States have exercised sole jurisdiction over length limits and have never before been subject to minimum weight limits. They have traditionally used these powers in bargaining with the trucking industry for higher user charges. Mandatory Federal increases deprive the States of this bargaining power while imposing significant highway cost increases on them. This reduces the likelihood that needed user charge increases can be secured.

Yet without such user charge increases, size and weight increases continue to represent an expanding public subsidy to the trucking industry. And that subsidy will exacerbate the shift of freight from rail to trucks using State highway systems starved for maintenance and rehabilitation funds.

Mandatory Federal weight and size limits can only reduce the State's opportunities to enact needed truck tax increases. However, delaying the effective date of the increased limits can allow the affected States to retain some of their bargaining power and allow time for the enactment of appropriate user charge increases. We would urge the committee to allow the States a significant amount of time—at least one and preferably two full legislative sessions—to comply with any increase in weight and size limits.

CONCLUSION

The rail concern with highway policy is a matter of economic self-interest. We cannot remain indifferent to policies so heavily affecting the competitive balance between rail and truck. This concern is especially acute given the prospect that higher

size and weight limits will mean a growing public subsidy to our principal competitors.

We are particularly concerned about the impact of a Federal takeover of size and weight regulation on the prospects for future State user charge legislation. Such a takeover, in our view, might very well put off indefinitely any chances for achieving full cost recovery at the State level, where two-thirds of all user charges are collected. Postponing the enactment of cost-based user charges would harm not just the railroad industry, but the highway system and its users. A failure of each vehicle class to pay its proper share of highway costs will lead to greater highway deterioration and increased financial pressure on already beleaguered State transportation budgets.

TABLE 1.—ANNUAL FEDERAL TAXES PAID BY A RAIL-COMPETITIVE HEAVY TRUCK UNDER PROPOSED TAX STRUCTURES

Federal tax category	Highway cost allocation study alternative 2C	S. 3044 proposal	House-passed bill
Fuel	$2,163	$2,070	$2,070
Heavy vehicle use	4,192	2,700	2,000
Excise—tractor	588	1,492	1,492
Excise—trailer	123	310	310
Truck parts and accessories	0	276	0
Tires, tubes, and tread	293	312	312
Oil	0	0	0
Total	$7,359	$7,160	$6,184
Percent of alternative 2C	100	97	84

COMMENTS ON THE FEDERAL TRUCK SIZE AND WEIGHT STUDY PRESENTED AT THE 1982 ANNUAL MEETING OF THE TRANSPORTATION RESEARCH BOARD BY BRADLEY GEWEHR, ASSOCIATION OF AMERICAN RAILROADS

I welcome this opportunity to offer my views at the final TRB review session on the U.S. Department of Transportation study of truck size and weight limits. Perhaps I should say this truck size and weight study, since Congress is now considering a bill which would call for yet another one. If the Uniform Motor Vehicle Standards Act of 1981 becomes law, we may all find ourselves back here next year, designing a study of the benefits and costs of allowing long doubles and triple-trailer combinations on the Interstates.

In these brief comments I have three concerns: why the railroads are interested in truck weights and size limits, the strengths and weaknesses of the study just completed, and what I perceive to be the key issues highway policy must address before the decision whether to increase weight and size limits should be made.

Contrary to what the modal diversion analysis in this study implies in purporting to show a minimal impact on railroads even from significant increases in truck size and weight, the freight rail industry has a direct interest in the economics of trucking and in weight and size limits, which significantly affect motor carrier costs. We compete with motor carriers for a major share of our business. The competition extends not only to rail piggyback and boxcar services, but also into areas once regarded as rail strongholds—movements of grain, lumber, primary metals, and chemicals, among others.

The primary aim of our involvement in the truck weight and size issue is not to obstruct the use of new truck technologies, such as heavier and longer vehicles. We expect motor carriers to seek and adopt ways to reduce their costs and improve service, just as we plan on continued advances in railroad operations and service. The real public policy question is who will bear the costs of increased truck size and weight limits?

If motor carriers were to pay all the costs larger, heavier trucks would entail, the railroads would have little or no objective grounds for complaint. But if bigger trucks impose significant costs that do not appear on the balance sheets of the motor carrier industry, then the complaint is legitimate and important. Railroads

then must compete with truck rates which do not reflect the full costs of the service. Not surprisingly, railroads have found that this is an expensive way to do business.

I want to emphasize, though, that the railroads are neither the only nor the biggest losers from this situation. Someone inevitably pays for heavier trucks. If motor carriers do not pay, there can be two results: the costs are shifted onto the other highway users, or the roads and bridges simply deteriorate. These outcomes are both inequitable and inefficient, and while some shippers benefit, the economy as a whole loses.

Over the course of these sessions and the meetings of the TRB Task Force, I have given my views on the design and execution of the study. It would serve little purpose to recite them all again now, but I want to call attention to the most serious flaw in the study in the hope that any future analysis will attempt to correct it. The modal diversion analysis grossly underestimates the extent of rail-truck competition. This results from the misdefinition of transportation markets: an analysis which ignores the tradeoffs shippers can make between more frequent and predictable service, on one hand, and lower rates, on the other, simply cannot provide a very realistic view of the ways in which trucks and railroads and compete.

I am not in a position to detail my criticism on this point further since I have not seen any documentation of the diversion analysis, and I understand that such documentation is not likely to be produced. Therefore I can only state my concern and hope that in any further work on this subject, the DOT will devote the time and resources necessary for a meaningful study of the question of intermodal competition and diversion.

In general, this study is as comprehensive and competent an analysis of the costs and benefits of changes in national weight limits as I have seen. Regardless of the faults each of us may find with specific aspects of the study, many of us probably would agree that, under the right set of circumstances, increased truck size and weight limits could yield net economic benefits. Bigger trucks do reduce carrier costs. Given the time and money, roads and bridges could be upgraded to handle bigger loads. Of course, there still remain some important impacts which we cannot readily estimate or convert into costs—highway safety and the cost incurred by drivers who share the highways with big trucks are prominent examples.

However, even the more limited question, the tradeoff between increased highway costs and reduced truck costs, must be considered in light of the current circumstances facing the highway program. What conditions must exist if increased weights and sizes are to yield net benefits, and are those conditions now met?

One of the key assumptions in the study is that highway reconstruction and resurfacing will keep up with the additional heavy axle loadings that result from increased weights and sizes. If this assumption does not hold, the rate of highway deterioration will increase. This imposes a twofold cost. First, the expenditures ultimately required to bring the highways back to an appropriate standard of quality increase sharply as repairs are deferred. Second, driving on bad roads costs motorists a great deal. The study itself reports that even a modest decline in pavement quality would cause one-half to one percent change in total annual vehicle operating costs—about $2 to $4 billion.

The present evidence indicates that the highways are not being repaired on schedule. The DOT's "Status of the Nations Highways: Conditions and Performance" (1981) reported that a significant overall decline in pavement serviceability has occurred in recent years. The amount of Interstate System pavement judged to be in poor condition doubled between 1975 and 1978. Replacing inadequate or unsound bridges also promises to be an expensive undertaking, estimated at about $30 billion. While heavy trucks are not responsible for all of these costs, these are the kinds of expenditure needs against which the decision to invest in upgrading highways to handle bigger trucks should be evaluated.

An important item on the cost side which the study only mentions in passing is the prospective impact of higher weights on roads not included in the Federal-aid system. These account for some 70 percent of the road mileage in the nation. If weight and size limits are increased on the Federal-aid roads, it is safe to assume that they will also be increased on the other parts of the highway system—unless, of course, the States undertake a very ambitious weight enforcement program and police a two-tier weight limit. In view of the present level of effort devoted to weight limit enforcement, this does not seem particularly likely. Even if it were, the added expense of such a program would be significant.

The costs of higher weight limits and the resulting increase in axle loads on these non-Federal aid roads would undoubtedly be large. This would exacerbate the shortfall in highway revenues already prevalent in States and counties throughout the Nation. Moreover, there is no reason to assume, even if State highway budgets could

meet these costs, that the expenditures on upgrading the system would be balanced by benefits at the same ratio as that which would apply to Interstate and primary highways. Secondary roads may require more extensive reconstruction to accommodate increased repetitions of heavy axle loads than highways which were initially designed and built for high traffic volumes.

It is clear that a highway funding problem already exists in the States and at the Federal level. Highway programs aren't able to keep up with current investment needs and in some cases cannot even perform the preventative maintenance necessary to keep those needs from burgeoning in the future. The obvious question is where can highway departments find the funds to eliminate the present backlog of highway repair and pay for increased size and weight limits as well?

The only sensible way to answer that question is to do a cost allocation study. The U.S. Department of Transportation has nearly completed one. Judging from its preliminary results, much of these funds should come from heavy trucks. Moreover, heavy trucks should bear an increased share of the highway budget. This finding has been echoed in many State cost allocation studies as well. (To avoid a semantic dispute, "heavy trucks" are here combination vehicles registered at 50,000 pounds or more-those which stand to take advantage of higher weight and size limits.)

One implication of this finding is that we need alternative forms of user charge. Increasing the fuel tax rates may raise revenue, but it will reduce the share these heavy trucks pay. At a time when an increasing share of highway expenditures will be allocated to pavement repair, an item closely related to the weight and number of axles using a road, it seems inequitable to expect automobiles, light- and medium-weight trucks to continue paying more than their share. This is all the more true as the recent trend toward increased truck weight and size continues. Truck user charges should be increased and restructured to ensure that trucks pay their full share of highway costs. Only when this has been done and the present needs of the highways have been addressed should an increase in truck weight and size be considered.

In conclusion, the weight and size issue seems all along to have been a cost allocation and user charge issue. A solution to the highway funding crisis must be found before a sensible decision on weights and sizes is possible. If this study has helped clarify that, then it has achieved a worthwhile purpose.

STATEMENT OF FRUEHAUF CORP.

Fruehauf Corp. is the world's largest manufacturer of truck trailers. Its trailer operations also include the manufacture of truck bodies, containers, container chassis, truck equipment, and parts and accessories which are sold through the industry's largest branch network. In addition, the company operates ship repair yards.

Fruehauf Corp. submits this statement in support of the size and weight limitations contained in S. 3044. For the past year the expectation of the enactment of uniform size and weight legislation has had a marked effect on sales by Fruehauf Corp. The company has been faced not only with the continuing effects of the recession but also by the deferral of purchasing by customers while awaiting passage of this uniform size and weight legislation. We urge this committee and the Senate to act promptly to pass legislation providing for the uniform size and weight set forth in S. 3044 so that we can bring many of our employees back to work. In the trailer plants alone of Fruehauf Corp. there has been a decline in employment in the amount of 5,000 employees between 1979 and the present. We are confident that, because of indications from our customers that there will be an immediate increase in orders and production when the uncertainty concerning size and weight is eliminated.

Given Fruehauf's world-wide standing as a manufacturer of truck trailers, the company appreciates the need for uniformity in nationwide requirements relating to truck size. The present pattern of laws and regulations bearing on truck length and width is basically inadequate for the latter part of the twentieth century. The existing system leads to the utilization by carriers of vehicles which meet the requirements of the most restrictive state. It forces many drivers to travel extra miles to avoid passing through states with restrictive length and width requirements. And it hampers the use of modern technology to produce safer, more efficient, and more economical vehicles.

For example, the Research and Development Division at Fruehauf Corp. has worked with its professional staff to produce a prototype vehicle which, assuming it conformed with all of the applicable laws and regulations, would provide enormous benefits to the trucking industry and to the nation. Fruehauf's concept tractor-trail-

er combination, called the FEV2000, could offer up to a 40-percent improvement in fuel economy, a 39-percent increase in cargo capacity, and more improved safety features than the tractor-trailer combinations currently available. The FEV2000 is an aerodynamically styled combination which is 60 feet long (including a truck tractor (cab) 10 feet long and a trailer 50 feet long) and 102 inches wide. The design reduces aerodynamic drag by 57 percent over a standard tractor-trailer combination.

For the information of the subcommittee, we are including with our statement various documents which more fully describe the features of the FEV2000, as follows:

The Fruehauf FEV2000 Factsheet.

News Release on the FEV2000, dated September 24, 1981.

A four-page folder with drawings and descriptions of the FEV2000.

Several features of the FEV2000 which boost its efficiency are incompatible with existing laws and regulations. The trailer width of 102 inches, for example, is banned in most states. In addition, some States limit the length of a trailer to 45 feet and the total length of the combination (including the cab) to 55 feet. Thus, despite its advantages, the FEV2000 could not be used today.

The benefits of a nationwide standard permitting the use of longer and wider trucks are indeed considerable. Such uniformity will eliminate the need to make costly detours to avoid states with restrictive rules. More importantly, the increase in cargo space will permit the use of fewer vehicles and will in some instances reduce the number of trips necessary to transport a given volume of goods.

The availability of wider and longer vehicles like the FEV2000 will have a positive effect on fuel efficiency, which is still an important consideration. Despite today's temporary oil glut, it is clear that the lessening of fuel consumption is in the long-range national interest.

Reducing the relative numbers of trips over the road has obvious safety advantages. Additional safety benefits will be produced as a result of increased flexibility in the making of design modifications. The modifications on the FEV2000, for example, have permitted a lowering of the center of gravity and greater stability on the road.

It should also be noted that the ability to use fewer vehicles to perform a given task will produce economic benefits for shippers of goods, for carriers, and for the members of the general public.

COMMENTS ON LENGTH

Currently there are no Federal standards for truck lengths. Fruehauf Corp. believes that prohibiting states from imposing restrictive limitations on the length of truck combinations, as proposed by S. 3044, will result in many benefits.

In addition to the advantages described above, one significant benefit to be derived from S. 3044 is the elimination of State rules imposing limitations on the total length of a truck tractor and trailer/semitrailer combination. Length limitations are applied only to individual trailers and semitrailers and not to cabs (truck tractors). The cabs may be designed to provide for improved aerodynamics and wind resistance, with resultant fuel economies.

Fruehauf Corp. recommends the enactment of the provision of S. 3044 which excludes "energy conservation devices and designs" from the limitations set forth in the bill. The exclusion provides the flexibility which is needed in order to produce energy-efficient vehicles.

Fruehauf Corp. also recommends the enactment of the provision in S. 3044 which prohibits States from precluding "double" combinations on the interstate system of Federal-aid highways. While we also find acceptable the provision in S. 3044 which prohibits states from imposing a limitation of less than 28 feet for individual units in a "double" combination, we believe a somewhat longer minimum figure would be more realistically reflective of shipper needs.

The use of a "double" tractor-trailer combination on the nation's roads has been shown to be no less safe than the use of "single" combinations. Recently, the Supreme Court of the United States had the opportunity to consider this point *(Kassel* v. *Consolidated Freightways)* and stated, in part:

Iowa made a more serious effort to support the safety rationale of its law than did Wisconsin in *Raymond,* but its effort was no more persuasive. As noted above, the District Court found that the "evidence clearly establishes that the twin is as safe as the semi." The record supports this finding.

The trial focused on a comparison of the performance of the two kinds of trucks in various safety categories. The evidence showed, and the District Court found, that the 65-foot double was at least the equal of the 55-foot single in the ability to brake,

turn, and maneuver. The double, because of its axle placement, produces less splash and spray in wet weather. And, because of its articulation in the middle, the double is less susceptible to dangerous "off-tracking," and to wind.

None of these findings is seriously disputed by Iowa. Indeed, the State points to only three ways in which the 55-foot single is even arguably superior: singles take less time to be passed and to clear intersections; they may back up for longer distances; and they are somewhat less likely to jackknife.

The first two of these characteristics are of limited relevance on modern interstate highways. As the District Court found, the negligible difference in the time required to pass, and to cross intersections, is insignificant on 4-lane divided highways because passing does not require crossing into oncoming traffic lanes, *Raymond*, supra, at 444, and interstates have few, if any, intersections. The concern over backing capability also is insignificant because it seldom is necessary to back up on an interstate. In any event, no evidence suggested any difference in backing capability, between the 60-foot doubles that Iowa permits and the 65-foot doubles that it bans. Similarly, although doubles tend to jackknife somewhat more than singles, 65-foot doubles actually are less likely to jackknife than 60-foot doubles.

* * * Iowa concedes that it can produce no study that establishes a statistically significant difference in safety between the 65-foot double and the kinds of vehicles the State permits. Brief for Appellant at 28, 32. Nor, as the District Court noted, did Iowa present a single witness who testified that 65-foot doubles were more dangerous overall than the vehicles permitted under Iowa law. 475 F. Supp., at 549. In sum, although Iowa introduced more evidence on the question of safety than did Wisconsin in *Raymond*, the record as a whole was not more favorable to the State. [Footnote references omitted.]

COMMENTS ON WIDTH

Currently, States are prohibited from authorizing trucks on the highway which are wider than 96 inches. (Expected from this prohibition are States with laws in effect on July 1, 1956, which authorized wider trucks.) Canada presently employs a 102-inch standard for trucks, and buses on interstate highways in this Country are permitted to be 102 inches wide.

Fruehauf Corp. believes that the mandating of 102 inches, as proposed by S. 3044, will result in many benefits. One such benefit, which is a direct result of a wider wheel base is improved vehicle stability and a reduction in the risk of rollovers. Additionally, there will be an improvement in vehicle braking, as well as a reduction in the steering forces required for turning.

Still another advantage of wider trucks stems from the fact that some products are shipped on pallets, which have dimensions of 4 feet by 8 feet. Where truck widths are restricted to 96 inches, only one row of pallets will fit in a closed van. A slightly wider trailer will permit two rows of pallets, in effect doubling the capacity of the trailer.

CONCLUSION

Fruehauf Corp. urges legislation which will authorize the use of trucks with greater volume.

On the interstate highways. Failure to provide for national uniformity will be harmful in many respects.

An immediate decision by Congress on this point is essential. The present lack of certainty as to truck size standards has caused many potential buyers of truck trailers to postpone their purchases. The resultant industry slowdown when coupled with the present recession has had an adverse effect on employment. A prompt decision adopting a uniform truck standard will permit companies like Fruehauf to make the necessary equipment acquisitions and quickly begin the manufacture of larger trailers. This will have an obvious beneficial impact on the employment picture in the industry.

It is widely acknowledged that national deregulation efforts to date have fostered competition by freeing up price restrictions. The present effort to deregulate size constraints should produce similar benefits by permitting companies to use their production facilities in the most efficient manner possible.

The immediate adoption of a uniform provision liberalizing length and width restrictions throughout the Country will have a positive effect on traffic safety, fuel efficiency, and the national economy.

Fruehauf Corp. suggests that the tax portion of S. 3044 be changed to provide that with respect to trailers that tax be imposed on trailers with a gross vehicle weight of more than 26,000 pounds. The Ways and Means Committee has inserted such pro-

vision in the bill pending in the House. Also it is important that the tax provisions be modified so as to prevent competitive dislocation that will result from parts being non-taxable. Fruehauf Corp. recommends that it be permitted to sell tax free certain parts and accessories when sold on or in connection with the sale of a completed trailer.

STATEMENT OF JIM JOHNSTON, PRESIDENT, OOIDA

Probable passage of the Highway Revenue Act of 1982 has posed an unprecedented challenge to owner-operator, independent truckers. 200,000 owner-operators are closely watching the current debate over the bill in the Senate. The outcome of that debate will determine the future of their industry.

Owner-Operators Independent Driver's Association of America (OOIDA), headquartered in Oak Grove, Missouri, this last weekend held a Board of Directors Meeting in Atlanta, Georgia to deal with this critical situation. Owner-Operators nationwide were represented. Board members from Missouri, South Dakota, Georgia, Alabama, Delaware, Ohio, Kentucky, Illinios, North Carolina, Montana, Michigan and a number of other states were present. OOIDA's membership, covering each of the 48 continental United States was represented.

The Board of Directors of the Association, faced with the probability of a nationwide shutdown because of the bill voted to continue their total opposition to its passage. The Board of Directors also decided to caution the Administration that further study of ways to raise revenues off the backs of owner-operators could worsen an already volatile situation. The Association pledged however, to continue its legislative efforts to defeat the bill short of a shutdown, a shutdown which, it feels should only be engaged in as a last resort.

OOIDA represents owner-operators nationwide, was founded in 1974 and currently has thousands of member nationwide.

The likelihood of passage of the Highway Revenue Act of 1982 has posed an unparalleled challenge to owner-operators. Faced with unreasonable and confiscatory taxes owner/operators have already begun to discuss the feasibility of a nationwide shutdown. Such an action cannot and should not be taken lightly, and should only be considered after every other means of resolving the situation posed by passage of the Highway Revenue Act of 1982.

OOIDA, its members and Board of Directors have worked diligently for a legislative solution to the Highway Revenue Act of 1982, and we have consistently maintained our initial position that the bill ought to be defeated. It is now probable that our efforts, while well-reasoned, will not meet with success. Passage of the bill, despite our efforts, would spur more direct action on the part of owner-operators, an action which, at some point in the future, will directly involve our members.

This is to resolve that in the event of such a shutdown, or the increasing likelihood of a shutdown, this Board of Directors here met, give authority to the President of this Association to represent this membership according to the authority invested in him by the By-Laws of the Association and gives him further authority to formulate positions he deems necessary, not to exclude announcing our sanction of a shutdown, should one occur.

The Department of Transportation has determined that the Highway Revenue Act of 1982 is the best and only means of obtaining the revenues required to repair the highway and bridge infrastructure of the nation. Indeed, the continued deterioration of our roads, highways and bridges is without question. OOIDA supports such an effort.

The Department of Transportation has also endorsed positions long promoted by this association, positions which would emphasize the importance of highway safety while promoting a substantial increase in owner-operator productivity. We join with the Administration in the furtherance of these goals.

But, this association will not and cannot endorse the tax and revenue portions of the Highway Revenue Act of 1982. These sections of the bill we believe to be both confiscatory and discriminatory to owner-operators, and we firmly believe their passage will cause a high percentage of business bankruptcies in our industry.

We are cognizant of the financial and revenue crisis now facing the Administration and are willing to work with the Administration to solve this critical problem. In keeping with this we are nevertheless disappointed the Administration did not consider, and present for public debate, proposals which would more equitably distribute the tax liability to other segments of the transportation industry. A system which would make all users, including trucks below GVW of 33,000 pounds, liable for their use of the highways must be included in any truck tax proposal. Further,

at-the-pump, pay-as-you-go provisions leading to a more equitable distribution of tax liabilities was not, but must be, considered.

We also note the subtle, but certain, philosophical shift of the United States government in regard to the nation's energy policy. It is our considered position that a shift of tax liability from non-essential users to essential users as contrary to the best interests of the nation and our industry.

With the foregoing in mind, we are here resolved that OOIDA, its members and Board of Directors, do oppose passage of the Highway Revenue Act of 1982, will work for its defeat, but do caution those who have proposed such legislation that we remain confident that an equitable solution to the revenue needs of the government can be met without passage of a bill which would, in our opinion, destroy the last vestages of financial stability remaining in our industry.

STATEMENT OF THE NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS

This is a statement of position by the National Association of Professional Insurance Agents (PIA). PIA is a national trade association representing more than 39,000 independent property and casualty insurance agents in all 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

We welcome this opportunity to offer our comments on the proposed amendments to section 30 of the Motor Carrier Act of 1980 (Act), Public Law 96-296, contained in section 405 of S. 3044, the Surface Transportation Act of 1982. Section 30 establishes minimum levels of financial responsibility for motor carriers transporting certain types of property.

Since it first became apparent that there would be some form of financial responsibility requirements in the legislation to deregulate the trucking industry, the property and casualty insurance industry has followed the development of this law and related regulations with special interest and concern.

Section 30 of the act and the regulations promulgated thereunder by the Department of Transportation (DOT) established three separate classifications of minimum levels of financial responsibility:

(1) Type 1, $750,000 covers trucks for hire transporting nonhazardous property in interestate or foreign commerce.

(2) Type 2, $5 million, covers trucks transporting very hazardous cargo.

(3) Type 3, $1 million, covers trucks transporting hazardous cargo not covered under Type 2.

The classification and the dollar limit involved depend upon the nature of the property transported and the degree of potential hazard should an accident occur.

Section 30 also authorized DOT to administratively reduce these limits for an interim period until July 1, 1983, to $500,000 for Type 1, $1 million for Type 2 and $500,000 for Type 3 if such reductions would not adversely affect public safety and would prevent a serious disruption in transportation service. DOT has exercised this rulemaking option and the reduced limits are currently in effect. On July 1, 1983, the aforementioned higher statutory limits will automatically take effect.

Section 405 of the Surface Transportation Act of 1982 would amend section 30 by authorizing DOT to determine the appropriate minimum levels of financial responsibility for each of the three classifications by utilizing public comment rulemaking procedures. PIA supports this new grant of rulemaking authority which should lead to the establishment of more realistic dollar limits in each classification category.

Numerous other factors, in addition to the nature of the cargo, affect the severity of accidents involving motor carriers. Proper utiliztion of section 405 rulemaking authority would provide DOT with an opportunity to consider and analyze all factors involved in each classification area. This would include extensive comments from a broad range of motor carrier interests and all involved segments of the insurance industry.

The higher the minimum limits of financial responsibility required by section 30, the more it will cost motor carriers to comply. One of the primary purposes of the act was to significantly reduce the regulatory and cost barriers which had made entry into the motor carrier business by small trucking operators extremely difficult. Large trucking firms are in a superior economic position and can more easily meet the premium cost of the insurance coverage needed to comply with section 30. Conversely, small operators or those seeking to enter this business will find unnecessarily high coverage requirements to be a serious financial burden or deterrent to entry. The regulatory flexibility provided by section 405 will allow appropriate consideration of such factors and the establishment of adequate minimum levels of financial responsibility in each classification consistent with the safety of the public

and an open competitive motor carrier marketplace. There is every reason to believe the current interim limits are too high and their adverse effects on this industry will only be compounded on July 1, 1983 if section 405 is not enacted.

PIA applauds the application of the objective criteria expressed in section 405(d)(3)(C) which ties classification to placarding. If the material hauled requires that the truck display a safety placard, then the vehicle must insure to certain limits whereas if no placard is required, the vehicle is subject to lower limits or even possibly an exemption. PIA's members have discovered that their trucking clients are often baffled and confused as to what level of financial responsibility is required. Objective, understandable criteria such as the placarding requirement would be a much more suitable method of informing the public about financial responsibility level requirements than current regulations.

There is a serious question whether the statutory requirement of high financial responsibility limits scheduled to take effect in 1983 will have a positive effect on the safety of motor carrier operations on the nation's highways. The Congress appears to have enacted section 30 under the assumption that high levels of financial responsibility would somehow make the Nation's highways safer. Unfortunately, there appears to be no demonstrable proof that this will be the case. High levels of financial responsibility will not keep truck drivers who are poor risks off the highways by denying them insurance at affordable rates. Every State has some form of residual auto insurance market mechanism where drivers with bad safety records can obtain insurance at what amounts to a subsidized rate compared to what they would otherwise pay if such state mandated programs did not exist. As a practical matter, if a truck driver can keep his license to drive, he can obtain the necessary insurance. Consequently, the enactment of section 405 would have no adverse impact on the safety of the public.

PIA urges the committee to include the provisions of section 405 when S. 3044 or other appropriate legislation is marked up in the near future.

Statement of J. R. Snyder, Railway Labor Executives Association

My name is J. R. Snyder. I am National Legislative Director for the United Transportation Union and Chairman of the Safety Committee of the Railway Labor Executives Association (RLEA). The RLEA represents all of the crafts of the railroad workers in this country, and the names of the constituent organizations are as follow:

American Railway and Airway Supervisors Association, American Train Dispatchers Association, Brotherhood of Locomotive Engineers, Brotherhood of Maintenance of Way Employees, Brotherhood of Railroad Signalmen, Brotherhood Railway Carmen of the United States and Canada, Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employees, Hotel & Restaurant Employees & Bartenders International Union.

International Association of Machinists & Aerospace Workers, International Brotherhood of Boilermakers & Blacksmiths, International Brotherhood of Electrical Workers, International Brotherhood of Firemen & Oilers, International Longshoremen's Association, International Organization, of Masters, Mates & Pilots of America, National Marine Engineers' Beneficial Association, Railroad Yardmasters of America, Railway Employees Department, AFL-CIO Seafarers International Union of North America, Sheetmetal Workers International Association, Transport Workers Union of America, and United Transportation Union.

The RLEA strongly opposes the provisions contained in title IV of S. 3044. This section will be very detrimental to the safety of the public, and cause faster and greater deterioration of the Nation's highways. Moreover, increasing the size and weight of trucks can only jeopardize the fragile economic stability of the railroads in this country. The adverse safety consequences of this legislation should not be masked by the desire to provide additional jobs and to repair the ailing interstate road system.

Railroads have always been the safest mode of transportation of hazardous materials. Title IV of this legislation will have the effect of diverting this type of commodity to trucks. If larger trucks are permitted to transport additional hazardous materials on the highways, the potential for catastrophes outweigh any possible economic gain by the truckers. Even if the Congress adopts in principal Title IV, there should be a specific restriction on the transportation by larger trucks of all hazardous materials.

Studies have shown that the effects of increased weight of the trucks causes greater deterioration of the highways. For example, the State of Louisiana found that an

80,000-pound truck annually costs $12,000 in terms of use and deterioration of highways, while a 100,000-pound truck costs $33,000. Aside from highway damage the older bridges will be placed in peril because of the added stress of the heavier weights.

Your committee has been supplied with the statistical data involving truck accidents on highways, and this data will not be repeated here. Trucks are involved in more accidents at rail-highway crossings per million vehicles than any form of motor transportation, and accidents at such crossings account for the highest cause of fatalities on the railroads. Suffice it to say every member of Congress should be aware of the safety consequences of title IV before casting his or her vote.

The financial responsibility section 405 does not provide adequate liability coverage. Those of us who have been involved in accidents involving hazardous materials recognize that such mishaps commonly result in multi-million dollar settlements or verdicts. The public cannot protect itself from such accidents, and if Congress permits inadequate coverage to exist, then Congress should require the Federal Government to guarantee any such obligation not covered by the minimum insurance and the assets of the trucking firms.

Finally, the adverse economic impact of title IV of S. 3044 on the railroad also must be taken into account. We applaud any legislation that will create jobs. However, title IV has the direct effect of taking business from the railroads (and therefore jobs). The estimates vary from a low of 2 percent by Secretary of Transportation Drew Lewis up to 20 percent predictions by some railroads. We need not advise Congress of the financial conditions of our railroads. You are well aware that many railroads cannot afford any further adverse economic impact on their business.

In conclusion, title IV of S. 3044 should be deleted or drastically revised.

UNITED PARCEL SERVICE,
Washington, D.C., December 3, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: United Parcel Service operates as a motor common carrier covering all points in the contiguous 48 states, the island of Oahu in Hawaii and Anchorage, Alaska. We specialize in the delivery of packages weighing less than 50 pounds and less than 108 inches in length and girth combined. In addition to our ground service we offer Next Day Air Service to over 29,000 communities and 130,000,000 people. We also offer Second Day Air Service to all points in the country.

We recognize the need to increase taxes to users of our nation's highways and bridges in order to repair, complete and maintain them. We support the tying together of increased user charges with uniform standards of size and weight for commercial motor vehicles.

Earlier in this Congress, UPS testified in support of S. 1402. We recommend inclusion in S. 3044 of the language in S.1402 that permits truck access not only to the Interstate System but to Federal-aid Highways as well.

Vehicle size uniformity on the Interstate Highway System is important but it loses much of its value if qualifying Federal-aid Highways are not included as well as assured access between terminals and the Interstate System.

You have our best wishes for rapid and successful completion of the legislation which is sorely needed, not only to rebuild our roads, but to help our nation's economy.

Sincerely,

ROBERT E. SMITH,
Vice President.

DECEMBER 2, 1982.

Hon. JOHN H. CHAFEE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR CHAFEE: As action on the Surface Transportation Assistance Act of 1982 is entering final stages I wanted you to have the views of United Parcel Service on this very important legislation.

United Parcel Service recognizes the need to increase taxes to users of our nation's highways and bridges in order to repair, complete and maintain them. We are

willing to pay our fair share to meet these objectives, as indeed does the entire motor carrier industry.

UPS fully supports the tying together of increased user charges with uniform standards of size and weight for commercial motor vehicles. It is our understanding that most parties are willing to go along with the size and weight changes, but there are disagreements on the proper level of user charges for heavier trucks.

We have examined the tax proposals of the Department of Transportation as stated in testimony before your Committee on Tuesday, November 30, 1982, and we are willing to support them. We also have reviewed the recommendations of the American Trucking Associations and also can support them.

We know that the Finance Committee is working earnestly to find an acceptable solution within the bounds of these two plans in order to move this legislation forward. If this is done and the size and weight standards are included, United Parcel Service stands ready to support passage of the bill.

By no means, however, would we recommend proceeding with just the fuel tax increase and abandoning the size and weight provisions. Such a move would increase costs of operations without the ability to absorb some of them through improved efficiency.

You have our best wishes for rapid and successful completion of the legislation which is sorely needed, not only to rebuild our roads, but to help our nation's economy.

Sincerely,

ROBERT E. SMITH,
Vice President.

ALLIANCE OF AMERICAN INSURERS,
Washington, D.C., December 6, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Alliance of American Insurers is a trade association representing more than 150 property and casulty insurance companies which write a major portion of the motor carrier insurance coverage across the United States. As such, our companies are vitally interested in S. 3044, the "Surface Transportation Act of 1982."

Alliance member companies are particularly interested in Title IV, Section 405 which amends the Motor Carrier Act of 1980. We believe the provisions of the bill which would allow the Secretary of Transportation the flexibility to adjust the minumum financial responsibility requirements under the Act to be desirable. The Alliance believes specific monetary limits mandating levels of coverage can best be determined by an agency rulemaking proceeding. This flexibility would permit financial responsibility levels to be established as appropriate.

Another provision of this bill would extend financial responsibility requirements to vehicles having a gross vehicle weight rating (GVWR) less than 10,000 pounds, transporting any quantity of Class A or B explosives, any quantity of poison gas, or large quantity radioactive materials in interstate or foreign commerce. While the Alliance does not believe this action is necessary, we do not object to its inclusion in the legislation. We would vigorously oppose, however, any further expansion of these provisions without further hearings and study.

Sincerely,

SALLY A. KIRKPATRICK,
Government Affairs Representative.

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